UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

AUG 15 2013

CERCLA 104(e) INFORMATION REQUEST
URGENT LEGAL MATTER: PROMPT REPLY REQUESTED
VIA CERTIFIED MAIL #7010 2780 0002 4354 8535

Mr. Jonathan Carroll
For Lazarus Texas Refinery I, LLC
801 Travis Street, Suite 2100
Houston, Texas 77002

Re: Falcon Refinery Superfund Site, Southeast of Ingleside in San Patricio County, Texas
SSID No. 06TN and SSID No. 06MC

Dear Mr. Carroll:

The U.S. Environmental Protection Agency (EPA) seeks cooperation from the Lazarus Texas Refinery I, LLC (LTRI), a Delaware limited liability company recognized by the Texas Secretary of State to conduct business in Texas, in providing information and documents relating to the Falcon Refinery Superfund Site located southeast of Ingleside in San Patricio County, Texas (Site). The EPA has obtained information that LTRI has purchased the Site from the National Oil Recovery Corporation (NORCO) and Norcorom Industries, SRL (NORCO-SRL). NORCO is a potentially responsible party (PRP) for this Site.

The EPA is seeking information from LTRI in order to understand the corporate organizational structures (parents, subsidiaries, and related entities) in connection with the purchase of the Site by LTRI. The EPA is also seeking information related to LTRI's liability for the Site under the Comprehensive Environmental Response, Compensation, and Liability Act (see Enclosure 4, Attachments 6 and 7, two EPA Memorandums).

This information request is not a determination that you or any of the related entities are responsible or potentially responsible for contamination that occurred at the Site. The EPA is sending this letter to aid the Agency in understanding the nexus of LTRI and related entities to the Site. The EPA does not expect you or any related entities to pay for or perform any site-related activities at this time. If the EPA determines that LTRI and/or any of the related entities are responsible or potentially responsible for response activities at the Site, you will receive a separate letter clearly stating such a determination as well as the basis the EPA has for the determination.

9557317

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 104(e), 42 U.S.C. § 9604(e), gives the EPA the authority to require you to respond to this information request (see Enclosure 1). We encourage you give this matter your full attention, and ***we respectfully request that you respond to this request for information within thirty (30) days of its receipt of this letter***. You may designate another official with the requisite authority to respond on your behalf. However, failure to respond to this information request may result in the EPA seeking penalties of up to $37,500.00 per day of violation. In addition, furnishing false, fictitious or fraudulent statements or representations is subject to criminal penalty under 18 U.S.C. § 1001. Further, failure to comply with this information request may materially jeopardize your otherwise possible BFPP qualification.

Please provide your written response to Mr. Robert Werner, Enforcement Officer, at the address included in the Information Request. Please refer to the enclosures below, which include important instructions and definitions, as well as the questions for response, in the preparation of your reply to this Information Request.

If you have any questions regarding this letter, contact Mr. Robert Werner at (214) 665-6724. For legal questions concerning this letter, please have your legal counsel contact Ms. Gloria Moran, Attorney, at (214) 665-3193. Thank you for your attention to this matter.

Sincerely yours,

Ben Banipal, PE
Acting Associate Director
Technical and Enforcement Branch (SF-T)
Superfund Division

Enclosures (4)

cc: National Registered Agents, Inc.

ENCLOSURE 1
FALCON REFINERY SUPERFUND SITE
INFORMATION REQUEST
RESPONSE TO INFORMATION REQUEST

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the federal "Superfund" law, the U.S. Environmental Protection Agency (EPA) responds to the release or threat of release of hazardous substances, pollutants or contaminants into the environment to stop additional contamination and to clean-up or otherwise address any prior contamination.

The EPA is requesting information under CERCLA Section 104(e). Section 104(e) may be found in the United States Code (U.S.C.) at Title 42 Section (section is denoted by the symbol "§") 9604(e) 42 U.S.C. § 9604(e).

Pursuant to the authority of CERCLA §104(e), you are hereby requested to respond to the enclosed information request. If you have any questions concerning the Site's history or this information request letter, please contact Mr. Robert Werner, the designated Enforcement Officer for the Site, at phone number (214) 665-6724, fax number (214) 665-6660 or via email at werner.robert@epa.gov. Please mail your response within 30 calendar days of your receipt of this request to the following address:

Mr. Robert Werner, Enforcement Officer
Superfund Enforcement Assessment Section (6SF-TE)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

If you or your attorney has legal questions that pertain to this information letter request, please contact Ms. Gloria Moran at phone number (214) 665-3193 fax number (214) 665-6460 or via email at moran.gloria-small@epa.gov. For contact via mail, use the following address:

Ms. Gloria Moran, Attorney
Office of Regional Counsel (6RC-S)
U. S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

BACKGROUND INFORMATION

The Falcon Refinery Superfund Site (Site) is the location from which the now-closed Falcon Refinery had operated. The Site is located southeast of the city limits of the City of Ingleside, in San Patricio County, Texas. The Site's land area approximates 101.5 acres and is comprised of four separate parcels of land; a 9.145 acre parcel, a 50.113 acre parcel, a 28 acre parcel, and a 14.24 acre parcel. The 9.145 acre parcel is situated on the northwest side where Farm-to-Market Road 2725 and Bishop Road/County Road 4717 intersect. The 50.113 acre parcel is situated on the southeast corner where Farm-to-Market Road 2725 and Bishop Road/County Road 4717 intersect. The 28 acre parcel is adjacent to the southeast side of the 50.113 acre parcel and both parcels are adjacent to the southwest side of County Road 4717. The 14.24 acre parcel is bounded on its southeast side by Redfish Bay and contains land areas on both sides of County Road 4692.

Primary processing activities at the now-closed Falcon Refinery had been conducted on the 50.113 acre parcel. Transfer of materials between barges and storage tanks occurred at the dock facility on the 14.24 acre parcel.

In May 2000, the Texas Natural Resource Conservation Commission conducted sampling activities at the Site and documented the following hazardous substances: cyclohexane, methlycyclohexane, toluene, ethylbenzene, xylenes (totals), fluoranthene, pyrene, benzo(a)anthracene, chrysene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, ideno(l,2,3-cd)pyrene, benzo(g,h,i)perylene, aluminum, arsenic, barium, cadmium, chromium, copper, lead, manganese, mercury, nickel, selenium, thallium, vanadium, and zinc. The findings of an Expanded Site Inspection, completed in November 2000, revealed releases from the Site of the following hazardous substances: fluoranthene, pyrene, benzo(a)anthracene, chrysene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, ideno(l,2,3-cd)pyrene, enzo(g,h,i)perylene, dibenz(a,h,)anthracene, barium, manganese, and mercury.

On May 28, 2003, the EPA notified NORCO in a Special Notice letter by certified mail of its potential liability under CERCLA. The May 28, 2003, letter requested NORCO to respond to the EPA with a good-faith offer to perform a removal action and commence remedial activities at the Site. The EPA and NORCO reached an agreement that called for NORCO to pay past costs, perform a removal action and commence a Remedial Investigation and Feasibility Study at the Site. On June 9, 2004, the EPA issued the Administrative Order on Consent for Removal Action (CERCLA Docket Number 06-04-04) and the Administrative Order on Consent for Remedial Investigation and Feasibility Study (CERCLA Docket Number 06-05-04) to NORCO in connection with the Site.

In a letter to NORCO dated March 28, 2011, the EPA determined it necessary to take over the performance of the remaining work required by the two Administrative Orders of Consent. The EPA invoked the work takeover provisions of the two Administrative Orders of Consent because NORCO defaulted in the performance of the terms and conditions of the Removal Order and the RI/FS Order.

In the May 2, 2011, Agreed Order for Resumption of Removal Action signed by NORCO, the EPA withdrew the work takeover of the remaining work required for the removal action at the Site.
On February 29, 2012, NORCO sold the Site to Lazarus Texas Refinery I, LLC (LTRI). In the agreement of the sale, Lazarus Energy Holdings LLC (LEH) and LTRI were identified as "jointly and severally" responsible for "costs, expenses and penalties" connected to the Site. Although LTRI, acting for NORCO, continues to perform the removal action, there have been many removal activity delays. LTRI has attributed these disruptions to its difficulty in making timely payments to its contractors.

In the September 26, 2011, Agreed Order for Resumption of the RI/FS signed by NORCO containing terms for performing the remaining RI/FS work, the EPA withdrew the work takeover of the remaining work required for the RI/FS at the Site. NORCO, however, failed to perform in accordance with this Agreed Order. In a Notice of Deficiencies to NORCO dated October 26, 2011, the EPA requested that NORCO remedy the deficiencies within thirty days. On December 11, 2011, the EPA determined that NORCO had not remedied any of the deficiencies related to the RI/FS action. The EPA, again, found NORCO to be in default and began the process of fully taking over the performance of the RI/FS action. The EPA continues to perform the RI/FS at the Site.

ENCLOSURE 2
FALCON REFINERY SUPERFUND SITE
INFORMATION REQUEST
INSTRUCTIONS AND DEFINITIONS

INSTRUCTIONS

1. Please provide a separate narrative response for each and every Question and subpart of a Question set forth in this Information Request.

2. Precede each answer with the Question (or subpart) and the number of the Question (and the letter of a subpart of a Question, if applicable) to which it corresponds.

3. If information or documents not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, ***you must supplement*** your response to the U.S. Environmental Protection Agency (EPA). Moreover, should you find, at any time, after submission of your response, that any portion of the submitted information is false or misrepresents the truth, or, though correct when made, is no longer true, you must notify the EPA of this fact as soon as possible and provide the EPA with a corrected response.

4. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question (and the letter of a subpart of a Question, if applicable) to which it responds.

5. You may assert a business confidentiality claim covering part or all of the information which you submit in response to this request. Any such claim must be made by placing on (or attaching to) the information, at the time it is submitted to the EPA, a cover sheet or a stamped or typed legend or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by the EPA. If you make such a claim, the information covered by that claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in subpart B of 40 CFR Part 2. If no such claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to you. The requirements of 40 CFR Part 2 regarding business confidentiality claims were published in the Federal Register on September 1, 1976, and were amended September 8, 1976, and December 18, 1985.

6. Personal Privacy Information. Personnel and medical files, and similar files the disclosure of which to the general public may constitute an invasion of privacy should be segregated from your responses, included on separate sheet(s), and marked as "Personal Privacy Information."

7. Objections to questions. If you have objections to some or all the questions within the Information Request Letter, you are still required to respond to each of the questions.

DEFINITIONS

The following definitions shall apply to the following words as they appear in this enclosure:

1. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.

2. The term "any", as in "any documents" for example, shall mean "any and all."

3. The term "arrangement" means every separate contract or other agreement between two or more persons.

4. The terms "document(s)" and "documentation" shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreements and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, telecopy, telefax, report, notice, message, analysis, comparison, graph, chart, map, interoffice or intra office communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc pack; any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with the printouts of such punch card, disc, or disc pack, tape or other type of memory); and (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like on it, (c) drafts, (d) attachments to or enclosures with any document and (e) every document referred to in any other document.

5. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business and personal addresses, email address(es), and telephone numbers, and present or last known job title, position or business. Also provide e-mail addresses.

6. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including, but not limited to, a sole proprietorship), to set forth its full name, address, and legal form (e.g. corporation [including state of incorporation], partnership, etc.), organization, if any, a brief description of its business, and to indicate whether or not it is still in existence and, if it is no longer in existence, to explain how its existence was terminated and to indicate the date on which it ceased to exist. Also provide e-mail addresses.

1. The term "identify" means, with respect to a document, to provide the type of document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), subject matter, the identity of the author, addressor, addressee and/or recipient, and the present location of such document.

8. The term "person" shall have the same definition as in Subsection 101 (21) of CERCLA, 42 U.S.C. § 9601 (21).

9. The term "Site" shall mean and include the Falcon Refinery Superfund Site (Site). The Site is the location from which the now closed Falcon Refinery had operated. The Site is located southeast of the city limits of the City of Ingleside, in San Patricio County, Texas. The Site's land area approximates 101.5 acres and is comprised of four separate parcels of land; a 9.145 acre parcel, a 50.113 acre parcel, a 28 acre parcel, and a 14.24 acre parcel. The 9.145 acre parcel is situated on the northwest side where Farm-to-Market Road 2725 and Bishop Road/County Road 4717 intersect. The 50.113 acre parcel is situated on the southeast corner where Farm-to-Market Road 2725 and Bishop Road/County Road 4717 intersect. The 28 acre parcel is adjacent to the southeast side of the 50.113 acre parcel and both parcels are adjacent to the southwest side of County Road 4717. The 14.24 acre parcel is bounded on its southeast side by Redfish Bay and contains land areas on both sides of County Road 4692.

10. The terms "you" or "your" or "Respondent" shall mean the addressee of this Request, the addressee's officers, managers, employees, contractors, trustees, partners, successors and agents.

12. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.

13. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 CFR Part 300 or 40 CFR Parts 260-280, in which case the statutory or regulatory definitions shall apply.

ENCLOSURE 3
FALCON REFINERY SUPERFUND SITE
INFORMATION REQUEST
QUESTIONS

1. Please identify the person(s) that answer the below questions on behalf of the Lazarus Texas Refinery I, LLC (LTRI) and/or for any person and/or business entity listed in the following question Number 2. Please also include that person(s) contact information address, phone number, fax number, and e-mail address.

2. Does LTRI wish to designate an individual for future correspondence from the U.S. Environmental Protection Agency (EPA)? If yes, please provide the individual's name, address, telephone number, and fax number.

3. Please identify the organizational relationships, if any, that now exist between LTRI and the following person and business entities. Provide supporting documentation that describes the organizationally relationships, if any, that exist between all of the following entities:

   A. Jonathan Carroll.

   B. Blue Dolphin Energy Company, a Delaware corporation, recognized by the Texas Secretary of State.

   C. Carroll & Company Financial Holdings LP, a Texas limited partnership, recognized by the Texas Secretary of State.

   D Lazarus Financial, LLC, a Texas limited liability company, recognized by the Texas Secretary of State.

   E. Lazarus Energy Holdings LLC (LEH), a Delaware limited liability company, recognized by the Texas Secretary of State.

   F. Lazarus Energy LLC, a Delaware limited liability company, recognized by the Texas Secretary of State.

   G. Lazarus Texas Refinery II, LLC, a Delaware limited liability company, recognized by the Texas Secretary of State.

   H. Apollo Management VI, L.P., a Delaware limited partnership, recognized by the New York Division of Corporations.

      1) What is the relationship of Apollo Management VI, L.P., to LEH?

      2) Please provide supporting documentation.

   I. AP Energy Investors, LLC.

      1) What is the relationship of AP Energy Investors, LLC to LEH?
      2) Please provide supporting documentation.

J. National Oil Recovery Corporation (NORCO).

K. Norcorom Industries, SRL (NORCO-SRL).

4. Please identify the relationships, if any, that now exist between Jonathan Carroll and the following business entities:

A. Blue Dolphin Energy Company, a Delaware corporation, recognized by the Texas Secretary of State.

B. Carroll & Company Financial Holdings LP, a Texas limited partnership, recognized by the Texas Secretary of State.

C. Lazarus Financial, LLC, a Texas limited liability company, recognized by the Texas Secretary of State.

D. LEH, a Delaware limited liability company, recognized by the Texas Secretary of State.

E. Lazarus Energy LLC, a Delaware limited liability company, recognized by the Texas Secretary of State.

F. LTRI, a Delaware limited liability company, recognized by the Texas Secretary of State.

G. Lazarus Texas Refinery II, LLC, a Delaware limited liability company, recognized by the Texas Secretary of State.

H. Apollo Management VI, L.P., a Delaware limited partnership, recognized by the New York Division of Corporations.

I. National Oil Recovery Corporation (NORCO).

J. Norcorom Industries, SRL (NORCO-SRL).

5. Is LTRI the current sole owner of the Falcon Refinery Superfund Site (Site)? If LTRI is not the Site's current sole owner, please identify the name(s) of any other person(s), entity, and/or entities that became owner(s) of any part, or of any percentage, of the Site after February 29, 2012, the date that the property was conveyed by NORCO. Please include a copy of the instrument(s) that document(s) any sale(s) or exchange(s) of any part of the Site, or of any percent of the Site, from LRTI to another person, entity, and/or entities after February 29, 2012.

6. Narrative in Letter Agreement, February 23, 2012, (see Enclosure 4, Attachment 2, Letter Agreement) states that "Norco [NORCO] and LEH and LTR [LTRI] have negotiated the sale and conveyance of the Falcon Refinery to LTR [LTRI] pursuant to the following terms and provisions…The purchase price for the Property shall consist of LTR [LTRI] paying Norco [NORCO] and a Related Company a total of Three Million Five Hundred Thousand Dollars ($3,500,000.00) cash…The Three Million Five Hundred Thousand Dollars ($3,500,000.00) cash [sale price] will be represented by promissory notes (the "Notes") made payable to Norco [NORCO] or order, and/or a Related Company, with interest on a reducing principal at the rate of five percent (5%) per annum, and payable in agreed monthly installments." Considering the above information, please answer the following questions:

A. Identify names and addresses of representatives from NORCO that buyers dealt with in this sale agreement.

B. Identify names and addresses of representatives from Norcorom Industries, SRL (NORCO-SRL) that buyers dealt with in this sale agreement.

C. Identify names and addresses of representatives from any "Related Company" that is/was related to NORCO and/or to NORCO-SRL that buyers dealt with in this sale agreement.

D. Identify all payment dates and dollar payments that buyers agreed to pay to NORCO for this purchase.

E. Identify all payment dates and dollar payments that buyers agreed to pay to NORCO-SRL for this purchase.

F. Identify all payment dates and dollar payments that buyers agreed to pay to any "Related Company" that is/was related to NORCO and/or to NORCO-SRL for this purchase.

G. Provide copies of documents that confirm dates and dollar payments made by buyers to NORCO.

H. Provide copies of documents that confirm dates and dollar payments made by buyers to NORCO-SRL.

I. Provide copies of documents that confirm dates and dollar payments made by buyers to any "Related Company" that is/was related to NORCO and/or to NORCO-SRL.

7. Are there any documented or undocumented agreements and/or understandings that imply, indicate or specify that LTRI and/or any other person or business entity will pay to NORCO, to NORCO-SRL, to any "Related Company" that is/was related to NORCO and/or to NORCO-SRL, and/or to agents, representatives, shareholders, bondholders, or creditors of NORCO, NORCO-SRL, and/or any "Related Company" that is/was related to NORCO and/or to NORCO-SRL any amount greater than 3.5 million dollars for the purchase of the Site? If your answer to this question is yes, please explain and provide supporting documentation.

8. Narrative in Letter Agreement, February 23, 2012, (see Enclosure 4, Attachment 2, Letter Agreement) states that "Norco [NORCO] and LEH and LTR [LTRI] have negotiated the sale and conveyance of the Falcon Refinery to LTR [LTRI] pursuant to the following terms and provisions…LEH and LTR [LTRI], jointly and severally, assuming and being solely responsible for costs, expenses and penalties in any way relating to…the EPA mandated clean-up contemplated and provided for under the AOC's and Agreed Orders…"

Considering the above information, please respond to the following:

A. Please identify all persons and/or entities that are responsible for costs, expenses and penalties in any way relating to LTRI's ownership of the Site.

B. The EPA sent a Demand Letter, dated September 19, 2012, to NORCO's registered agent (See Enclosure 4, Attachment 3, Demand Letter). The Demand Letter's stated subject is "Administrative Order on Consent for Remedial Investigation and Feasibility Study Replenishment of Special Account #2, Falcon Refinery Superfund Site 06MC." The Letter states that "EPA is notifying you of your client's noncompliance with the above-referenced Order for failure to pay EPA's costs demanded by EPA's bill dated March 09, 2012. Amount now due is $209,036.12. To date, the EPA has not received this reimbursement amount from NORCO.

1) Has LTRI, LEH, or any person, and/or any other business entity reimbursed the $209,036.12 replenishment payment to NORCO? If your answer is yes, please provide copies of a canceled check(s), electronic transfer receipt(s), etc., to verify payment(s) of the $209,036.12 replenishment amount to NORCO. If your answer is no, please answer the following questions:

a. Does LTRI intend to pay the $209,036.12 replenishment payment directly to EPA? If yes, please identify the date that LTRI intends to transmit the payment to the EPA; or

b. Does LEH intend to pay the $209,036.12 replenishment payment directly to EPA? If yes, please identify the date that LEH intends to transmit the payment to the EPA.

C. The EPA has learned that performance of NORCO's Removal Action at the Site is delayed because of LTRI's lack of funds. Please provide documentation that shows LTRI's financial ability to complete NORCO's Removal Action at the Site.

D. The EPA has assessed $500,000.00 in stipulated penalties in connection with the response actions at this Site. Does LTRI, LEH, or any person, and/or business entity intend to pay this penalty amount to the EPA?

9. Introductory paragraph of the Letter Agreement (see Enclosure 4, Attachment 2, Letter Agreement) states that, "...LEH and LTR [LTRI] are aware that the Falcon Refinery has been designated by the Environmental Protection Agency ("EPA") as a Superfund Site and is subject to remediation and clean-up in accordance with two Administrative Orders On Consent..." Article II, paragraph 2.5 of the Letter Agreement states that, "As part of the consideration for Norco [NORCO] and/or a Related Company conveying the Property to LTR [LTRI] in accordance with the terms and provisions of this Letter Agreement, LEH and LTR [LTRI], jointly and severally, do hereby unequivocally state as follows: THAT THEY HAVE CONDUCTED THEIR OWN INDEPENDENT INVESTIGATION OF THE PROPERTY, AND ARE SATISFIED THAT THE PROPERTY IS SUITABLE FOR THE PURPOSES FOR WHICH LEH AND/OR LTR [LTRI] INTENDS TO USE THE PROPERTY..." (emphasis in original)

Considering the preceding statements, and if LTRI is the Site's current sole or joint owner, did LTRI, conduct "all appropriate inquiries" in an attempt to qualify for landowner liability protections provided by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (see Enclosure 4, Attachments 6 and 7, Two EPA Memorandums)? If your answer to this question is yes, please respond to the following:

A. Provide copies of all documents in your possession that identify "all appropriate inquiries" and/or efforts that you believe qualify LTRI for landowner liability protection as a bona fide prospective purchaser (BFPP) provided by CERCLA, including the "Phase I Environmental Site Assessment" or equivalent "due diligence" document(s) that was completed prior to February 29, 2012.

B. Please explain whether LTRI, or any person and/or any business entity listed above in question Number 2 is now, or ever was, affiliated with NORCO through any contractual, corporate or financial relationship, including bankruptcy or other corporate restructuring. Please include any supporting documentation. (Note: Such relationship does not involve an instrument by which title to the Site was conveyed or financed by contract for goods or services).

C. From February 29, 2012, until the present day, has LTRI, and/or any person(s), business entity, and/or entities that currently share with LTRI any ownership for any part and/or any percentage of the Site, exercised appropriate care with respect to hazardous substances found at the Site by taking "reasonable care to prevent releases?"

ENCLOSURE 4
FACLON REFINERY SUPERFUND SITE
INFORMATION REQUEST
SUPPORTING DOCUMENTS (SITE INFORMATION)

1. Aerial photo of the Site area overlaid with boundary lines for a 9.145 acre parcel of land, a 50.113 acre parcel of land, a 28.00 acre parcel of land, and a 14.24 acre parcel of land. These four parcels, when combined, comprise the Falcon Refinery Site's total land area.

2, Letter Agreement dated February 23, 2012, between National Oil Recovery Corporation and Mr. Jonathan Carroll, Director, Lazarus Energy Holdings LLC and to Mr. Jonathan Carroll, Director, Lazarus Texas Refinery I, LLC.

3. Demand Letter dated September 19, 2012, from the EPA to Richard F. Bergner, registered agent for NORCO, advising that NORCO had failed to replenishment the Special Account #2, Falcon Refinery Superfund Site 06MC.

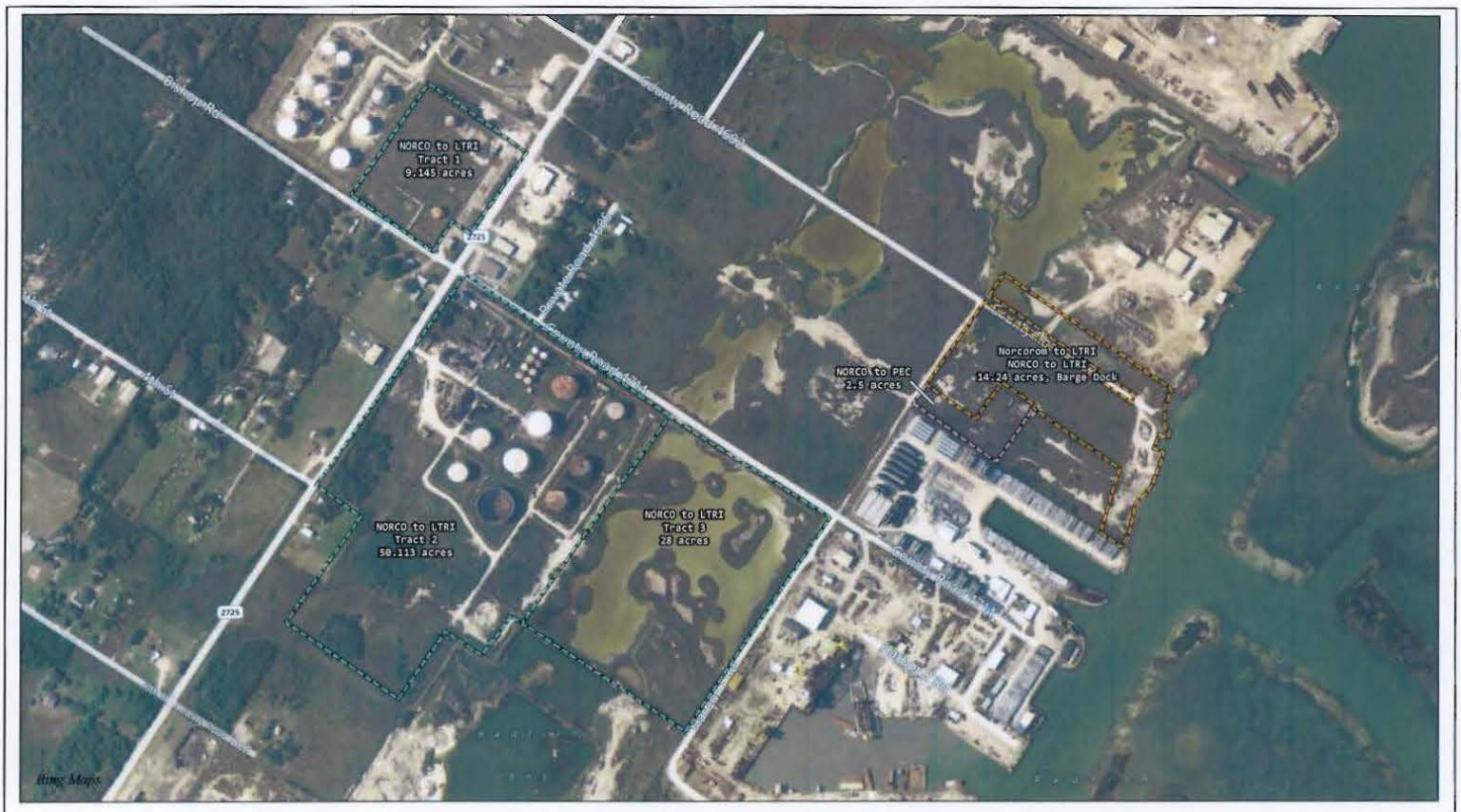
4. Special Warranty Deed with Vendor's Lien, executed February 29, 2012, documenting that NORCO sold to LTRI an 87.258 acre land area identified as "Refinery Land," (first part of the Site) and a 14.24 acre land area identified as "Barge Dock," (second part of the Site)

5. Special Warranty Deed and Bill of Sale, executed February 29, 2012, documenting that Norcorom Industries SRL sold to LRTI a 14.24 acre land area identified as "Barge Dock (the second part of the Site).

6. EPA Memorandum, March 6, 2003, Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser.

7. EPA Memorandum dated Setember 21, 2011, Subject: Enforcement Discretion Guidance Regarding the Affiliation Language of CERCLA's Bona Fide Prospective Purchaser and Contiguous Property Owner Liability Protections.

Attachment No. 1



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0 0.1 0.2 0.3
Miles

Falcon Refinery
Property Descriptions

San Patricio County, TX

Property Type
- Barge Dock (14.24 ac)
- PEC Property (2.5 ac)
- Refinery Land (87.258 ac)

EPA Region 6 SF
GIS Support
Dallas, TX
August 14, 2012

20120814ML01

Boundaries delineated by EPA Region 6 GIS from the following San Patricio County, TX documents:
02/29/2012 Norcorom Industries SRL to Lazarus Texas Refinery I, LLC (LTRI) the 14.24 acre Barge Dock, Deed #615662, SDMS #664139. 02/29/2012 National Oil Recovery Corporation (NORCO) to LTRI the 87.258 acre Refinery Land comprised of a 9.145 acre parcel, a 50.113 acre parcel, and a 28 acre parcel, and the previously identified 14.24 acre Barge Dock, Deed #615663, SDMS #664144; 08/17/1998 NORCO sells to Pi Energy Corporation (PEC) the 2.5 acre parcel, Deed #465401, SDMS #664214

Attachment No. 2

NATIONAL OIL RECOVERY CORPORATION
2001 OCEAN BOULEVARD, #520
LONG ISLAND, NEW YORK 11509
(516) 239-8735

February 23, 2012

Mr. Jonathan Carroll
Director
Lazarus Energy Holdings, LLC
801 Travis, Suite 2100
Houston, Texas 77002

Mr. Jonathan Carroll
Director
Lazarus Texas Refinery I, LLC
801 Travis, Suite 2100
Houston, Texas 77002

In Re: Falcon Refinery

Gentlemen:

Representatives of National Oil Recovery Corporation ("Norco") and Lazarus Energy Holdings, LLC, a Delaware limited liability company authorized to do business in Texas ("LEH") have discussed the prospect of LEH or a subsidiary thereof, Lazarus Texas Refinery I, LLC, a Delaware limited liability company authorized to do business in Texas ("LTR") purchasing from Norco and Norcorom Industries, SRL, a related company ("Related Company"), Norco's land, equipment, pipelines and barge facility located in Ingleside, San Patricio County, Texas, and commonly known as the "Falcon Refinery." LEH and LTR are aware that the Falcon Refinery has been designated by the Environmental Protection Agency ("EPA") as a Superfund Site and is subject to remediation and clean-up in accordance with two Administrative Orders On Consent, dated June 9, 2004, between the EPA and Norco, to which reference is hereby made for all purposes (the "AOC's"), as well as an Agreed Order for resumption of removal work, dated May 2, 2011 ("Removal Action Agreed Order"), and an Agreed Order for resumption of Remedial Investigation and Feasibility Study, dated September 26, 2011 ((RI/FS Agreed Order") (collectively, the "Agreed Orders"). In addition LEH and LTR are aware that Norco has received from the EPA a Notice Of Deficiencies, dated October 26, 2011, relative to the RI/FS Agreed Order, and since then the EPA has taken over the work contemplated by the RI/FS Agreed Order and related AOC.

Norco and LEH and LTR have negotiated the sale and conveyance of the Falcon Refinery to LTR pursuant to the following terms and provisions:

ARTICLE I, Definitions. For purposes of this Letter Agreement, the following terms shall have the meanings set forth below:

1.1 Refinery Land. Shall mean the surface only of the certain 87.258 acres of land, more or less, situated in San Patricio County, Texas, and described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes (the "Refinery Land'), together with all improvements located thereon, and all and singular the rights and appurtenances pertaining to the Refinery Land, including, but not limited to, all of Norco's rights, titles and interest, if any, in and to all adjacent easements, streets, alleys, rights of way, rights of ingress and egress, strips and gores.

1.2. Refinery Equipment. Shall mean in addition to the improvements located on the Refinery Land, all of the personal property, fixtures and equipment described in Exhibit "B," attached hereto and made a part hereof for all purposes (the "Refinery Equipment").

1.3. Barge Dock. Shall mean the surface only of the certain 14.24 acres of land, more or less, situated in San Patricio County, Texas, and described by metes and bounds in the Exhibit "C," attached hereto and made a part hereof for all purposes (the "Barge Dock"), together with all improvements located thereon, and all and singular the rights and appurtenances pertaining to the Barge Dock.

1.4. Pipelines And Equipment. Shall mean all pipes, pipelines, valves, metering equipment, pumps, if any, in, on or under (i) the Refinery Land, (ii) the Refinery Equipment, and (iii) the Barge Dock (collectively the "Pipelines And Equipment").

1.5. Superior Lease Agreement Shall mean the certain Lease Agreement, dated January 16, 2006, by and between Norco and Superior Crude Gathering, Inc. ("Superior") (the "Superior Lease Agreement"), as amended from time to time, true and correct copies of which have been delivered to LEH, the receipt of which is hereby acknowledged by LEH.

1.6. Permitted Encumbrances. Shall mean all as set out in Exhibit "D," attached hereto and made a part hereof for all purposes.

1.7. The items described in 1.1 through 1.5, above, are herein collectively called or referenced to as the "Property."

ARTICLE II, Purchase Price, Assumption Of Obligations, Indemnities.

2.1. The purchase price for the Property shall consist of LTR paying Norco and a Related Company a total of Three Million Five Hundred Thousand Dollars ($3,500,000.00) cash, in the manner and as set forth in 2.3. hereof, and LEH and LTR, jointly and severally, assuming and being solely responsible for costs, expenses and penalties in any way relating to (i) the EPA mandated clean-up contemplated and provided for under the AOC's and Agreed Orders, currently, including but not limited to, and consisting of: (A) estimated Six Hundred Fifty-Five Thousand Dollars ($655,000.00) for the Removal Action clean-up; (B)

estimated Five Hundred Thousand Dollars ($500,000.00) for the RI/FS clean-up; (C) estimated Three Hundred Seventy-Five Thousand Dollars ($375,000.00) for EPA monitoring costs; and (D) estimated Five Hundred Thousand Dollars ($500,000.00) EPA penalty; and (E) estimated Two Hundred Fifty Thousand Dollars ($250,000.00) rebate to Superior as set forth in 4.3. hereof.

2.2. LEH and LTR acknowledge that the estimated clean-up, EPA monitoring costs and EPA penalty set out in 2.1., above, are Norco's best estimates of such costs and penalty arrived at in reliance upon current information and data supplied by Norco's clean-up contractor, TRC Environmental, and the EPA as to the EPA penalty and monitoring costs, and that such costs and penalty may increase over time as the work proceeds, especially in view of the fact the EPA is currently in charge of the RI/FS clean-up. Notwithstanding anything in this Letter Agreement to the contrary, as part of the consideration for Norco conveying the Property to LTR, LEH and LTR, jointly and severally, shall be solely responsible to the exclusion of Norco and/or a Related Company for any and all costs and penalties attributable to, directly or indirectly, the clean-up under the AOC's and Agreed Orders and the rebate to Superior, with the further understanding that any sums paid out by LEH or LTR to complete the AOC's and Agreed Orders to the EPA's complete satisfaction, and to refund Superior per 4.3., below, less than the estimated costs, expenses, penalties and rebate to Superior set forth in 2.1., above, shall inure to LEH's and/or LTR's benefit.

2.3. The Three Million Five Hundred Thousand Dollars ($3,500,000.00) cash will be represented by promissory notes (the "Notes") made payable to Norco or order, and/or a Related Company, with interest on a reducing principal at the rate of five percent (5%) per annum, and payable in agreed monthly installments. The Notes will be secured in their payment by liens reasonably satisfactory to Norco and/or its Related Company.

2.4. As security for the AOC's, Norco caused two (2) letters of credit to be issued in favor of the EPA, each in the amount of Five Hundred Thousand Dollars ($500,000.00). Norco is advised by the EPA that the EPA has cashed in said letters of credit and is holding the cash proceeds in EPA controlled bank accounts to be used as needed. After the clean-up is contemplated by the AOC's has been completed, any funds remaining in the EPA's accounts shall remain the property of and be payable to Norco to the exclusion of LEH and LTR.

2.5. As part of the consideration for Norco and/or a Related Company conveying the Property to LTR in accordance with the terms and provisions of this Letter Agreement, LEH and LTR, jointly and severally, do hereby unequivocally state as follows: THAT THEY HAVE CONDUCTED THEIR OWN INDEPENDENT INVESTIGATION OF THE PROPERTY, AND ARE SATISFIED THAT THE PROPERTY IS SUITABLE FOR THE PURPOSES FOR WHICH LEH AND/OR LTR INTENDS TO USE THE PROPERTY;

LEH AND LTR, JOINTLY AND SEVERALLY, ACKNOWLEDGE THAT NEITHER NORCO NOR ANY AGENT OF NORCO NOR ANY RELATED COMPANY HAS MADE ANY WARRANTIES OR REPRESENTATIONS AS TO THE PHYSICAL CONDITION, LAYOUT, ENVIRONMENTAL CONDITION, OPERATION OR ANY OTHER MATTER OR THING AFFECTING OR RELATING TO THE PROPERTY OR THIS LETTER AGREEMENT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS LETTER AGREEMENT, AND THAT LEH AND LTR ARE NOT RELYING UPON ANY STATEMENT OR REPRESENTATION MADE BY ANY OTHER PERSON OR ENTITY THAT IS NOT EMBODIED IN THIS LETTER AGREEMENT. LEH AND LTR, JOINTLY AND SEVERALLY, HEREBY (A) EXPRESSLY ACKNOWLEDGE THAT NO SUCH WARRANTIES OR REPRESENTATIONS HAVE BEEN MADE EXCEPT AS SPECIFICALLY SET FORTH IN THIS LETTER AGREEMENT, (B) AGREE TO TAKE AND ACCEPT THE PROPERTY "AS IS" SUBJECT TO ITS CONDITIONS ON THE CLOSING DATE (SUBJECT TO THE TERMS OF THIS LETTER AGREEMENT CONCERNING TITLE), AND (C) AGREE THAT THE PROPERTY IS SATISFACTORY TO LEH AND/OR LTR, JOINTLY AND SEVERALLY, IN ALL RESPECTS. LEH AND LTR, JOINTLY AND SEVERALLY, ACKNOWLEDGE THAT NORCO OR ITS RELATED COMPANY IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR OTHER INFORMATION PERTAINING TO THE PROPERTY OR ITS OPERATION OR ANY OTHER MATTER OR THINGS FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR ANY OTHER PERSON, UNLESS SPECIFICALLY SET FORTH HEREIN. THE PROVISIONS OF THIS SECTION 2.5. SHALL SURVIVE THE CLOSING.

2.6. As additional consideration for Norco and/or the Related Company conveying the Property to LTR, LEH and LTR, jointly and severally, do hereby agree to INDEMNIFY, DEFEND AND HOLD HARMLESS NORCO, ITS RELATED COMPANY AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS AND ATTORNEYS (COLLECTIVELY THE "INDEMNIFIED PARTIES"), FROM ANY AND ALL LIABILITY, LIENS, DEMANDS, COSTS, JUDGMENTS, SUITS, EXPENSES AND CLAIMS OF ANY KIND OR CHARACTER ARISING OUT OF, IN CONNECTION WITH, OR RELATING IN WHOLE OR IN PART TO OR IN ANY WAY CONNECTED WITH (A) THE OPERATION, OWNERSHIP, CUSTODY OR CONTROL OF THE PROPERTY SUBSEQUENT TO THE CLOSING AND/OR (B) ANY OPERATION OR ACTIVITY HEREAFTER CONDUCTED BY LEH AND/OR LTR, OR ANY OF THEIR AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES, OR INVITEES, IN, ON, ABOUT, UNDER, OR PERTAINING TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR INJURY OR DEATH OF ANY PERSONS OR DAMAGE, LOSS OR DESTRUCTION OF ANY PROPERTY, REAL OR PERSONAL, UNDER ANY

THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, WHICH HAS OCCURRED OR RELATES TO PERIODS OF TIME ON, OR AFTER THE CLOSING. LEH AND LTR, JOINTLY AND SEVERALLY, FURTHER COVENANT AND AGREE TO DEFEND ANY SUITS BROUGHT AGAINST ANY OF THE INDEMNIFIED PARTIES ON ACCOUNT OF SAID CLAIMS AND TO PAY ANY JUDGMENTS AGAINST ANY OR ALL OF THE INDEMNIFIED PARTIES RESULTING FROM ANY SUCH SUIT OR SUITS, TOGETHER WITH ALL COSTS AND EXPENSES RELATIVE TO ANY SUCH CLAIMS, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES AND COURT COSTS. EACH OF THE INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO PARTICIPATE AT ITS OWN COST AND EXPENSE IN THE DEFENSE OF ANY SUIT OR CLAIM IN WHICH THEY (OR ANY OF THEM) MAY BE A PARTY WITHOUT RELIEVING LEH AND/OR LTR OF THEIR OBLIGATIONS HEREUNDER.

THE FOREGOING INDEMNITY SHALL APPLY WHETHER OR NOT ARISING OUT OF THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE, FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES AND SHALL APPLY, WITHOUT LIMITATION, TO ANY LIABILITY IMPOSED UPON ANY OF THE INDEMNIFIED PARTIES AS A RESULT OF ANY THEORY OF STRICT LIABILITY OR ANY OTHER DOCTRINE OF LAW OR EQUITY.

2.7. ALL REPRESENTATIONS, COVENANTS, WARRANTIES AND INDEMNITIES MADE HEREIN BY THE PARTIES SHALL BE CONTINUING AND SHALL BE TRUE AND CORRECT ON AND AS OF THE DATE OF CLOSING WITH THE SAME FORCE AND EFFECT AS IF MADE AT THAT TIME (AND SHALL INURE TO THE BENEFIT OF THE RESPECTIVE SUCCESSORS AND ASSIGNS OF THE PARTIES), AND ALL OF SUCH REPRESENTATIONS, COVENANTS, WARRANTIES, AND INDEMNITIES SHALL SURVIVE THE CLOSING AND THE DELIVERY OF THE CLOSING DOCUMENTS.

ARTICLE III, Closing.

3.1. At the closing, which is scheduled for February 29, 2012, Norco and the Related Company shall convey the Refinery Land, the Refinery Equipment, the Barge Dock and Pipelines And Equipment free and clear of all liens, claims or other encumbrances except only for the Superior Lease Agreement and other "Permitted Encumbrances." Said conveyance shall contain the following provisions and shall be signed by LTR acknowledging its acceptance of the language of such provisions:

GRANTOR HAS EXECUTED AND DELIVERED THIS DEED AND HAS GRANTED, BARGAINED, SOLD AND CONVEYED THE PROPERTY, AND GRANTEE HAS ACCEPTED THIS DEED AND HAS PURCHASED THE PROPERTY, AS IS, WHERE IS, AND WITH ALL FAULTS, IF ANY, AND

WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO (A) THE CONDITION OF THE PROPERTY OR ANY ELEMENT THEREOF, INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) THE NATURE OR QUALITY OR CONSTRUCTION, STRUCTURAL DESIGN OR ENGINEERING OF THE IMPROVEMENTS; (C) THE QUALITY OF THE LABOR AND MATERIALS INCLUDED IN THE IMPROVEMENTS, (D) THE SOIL CONDITIONS, DRAINAGE OR OTHER CONDITIONS EXISTING AT THE PROPERTY WITH RESPECT TO ANY PARTICULAR PURPOSE OR BY ANY DESCRIPTION OF THE PROPERTY; (E) ALL WARRANTIES CREATED BY AN AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY; (F) THE PRESENCE ON THE PROPERTY OR RELEASED FROM THE PROPERTY OR SURROUNDING AREAS, OF ANY HAZARDOUS SUBSTANCES, SOLID TOXIC CHEMICALS OR OTHER MATERIALS; AND (G) ALL OTHER WARRANTIES AND REPRESENTATIONS WHATSOEVER, EXCEPT THE WARRANTY OF TITLE EXPRESSLY SET FORTH HEREIN.

3.2. A Bill of Sale, covering and conveying the Refinery Equipment and the Pipelines And Equipment "AS IS," "WHERE IS" and 'WITH ALL FAULTS" in the form substantially the same as that attached hereto as Exhibit "G" and made a part hereof.

3.3. An Assignment without recourse of all of Norco's rights, titles, interest and obligations in, to and under the Superior Lease Agreement in the form substantially the same as that attached hereto as Exhibit "H" and made a part hereof.

3.4. Norco and the Related Company and LEH and/or LTR agree to execute and deliver at the Closing or cause to be executed and delivered at any time thereafter such other documents as the other party hereto may reasonably require in order to fully consummate the purchase, sale, conveyance, assumption of liabilities and indemnities contemplated hereunder.

3.5. In addition, LEH and/or LTR, jointly and severaly, shall assume and be solely responsible for all of Norco's obligations in, to and under the Superior Lease Agreement and shall indemnify and hold harmless, jointly and severally, the Indemnified Parties arising in any way out of and/or related to, directly or indirectly, the Superior Lease Agreement.

3.6. Notwithstanding anything to the contrary in this Letter Agreement, LEH acknowledges that it has requested title to the Property be conveyed to LTR as an

accommodation to LEH. In view of such, LEH does hereby guarantee (A) the prompt payment of the Notes in accordance with their terms, (B) the prompt and faithful performance of all of the obligations imposed on LTR under the lien documents, and (C) the prompt and faithful performance of all of the other obligations assumed by and/or imposed on LTR under this Letter Agreement, including, but not limited to, the AOC's and the Agreed Orders.

ARTICLE IV, Miscellaneous.

4.1. Clean-Up Payments. Retroactive to November 23, 2011, as part of the ongoing consideration for the conveyance of the Property to LTR, LEH and LTR, jointly and severally, shall fund on a current basis the clean-up program being conducted by Norco pursuant to the Removal Action Agreed Order and related AOC, except for the escrow amounts required under the Agreed Orders. Such funding shall include, but not be limited to, the items set forth in paragraphs 9 and 10 of the RI/FS Agreed Order. LEH and Norco, subsequent to the Closing, shall use their combined best efforts to cause the EPA to reinstate the RI/FS Agreed Order in favor of Norco the RI/FS Agreed Order, and if successful, LEH and LTR, jointly and severally, shall be solely responsible for (and fund on a current basis), costs also incurred in connection with clean-up activities required under the RI/FS Agreed Order and related AOC. If LEH and Norco are not successful in causing the EPA to reinstate the RI/FS Agreed Order in favor of Norco, LEH and/or LTR, jointly and severally, nonetheless agree to indemnify and hold harmless Norco from and against any and all claims, demands and/or causes of action reasonably related to the Agreed Orders and the AOC's and made by the EPA against Norco.

4.2. TRC Contractor. TRC will continue as contractor to complete the clean-up program, with a contractor of LEH's selection providing oversight of the clean-up work and who will report directly to LEH and will look to LEH only for its compensation for work to be performed at the Falcon Refinery and which shall not be considered a clean-up cost related to the AOC's and Agreed Orders.

4.3. Superior Crude Gathering, Inc. Lease Agreement: LEH and LTR, jointly and severally, acknowledge that the Falcon Refinery is subject to a Lease Agreement with Superior Crude Gathering, Inc. Under the terms of the Superior Lease Agreement, LEH and/or LTR, upon the closing of the conveyance contemplated hereunder, would have the right to terminate the Superior Lease Agreement, with Superior having Two Hundred Seventy (270) days to remove its operation from the Falcon Refinery. The Superior Lease Agreement is scheduled to terminate by its own terms in June of 2013, and has paid Norco in advance rent covering that period of time from the present up until the termination of the Lease Agreement. Any cash consideration that must be paid to Superior in connection with the termination of the Superior Lease Agreement shall be payable by LEH and/or LTR, jointly and severally, pursuant to the Superior Lease Agreement.

4.4. Norco and LEH agree that this Letter Agreement supersedes and takes the place of the certain letter agreement, dated November 23, 2011, which letter agreement is hereby rendered null and void.

If the foregoing correctly sets forth the agreement of the parties as to the subject matter of this Letter Agreement, then please sign duplicate originals of this Letter Agreement in the space provided below and return one executed duplicate original to the undersigned.

NATIONAL OIL RECOVERY CORPORATION

By: _____
R.F. BERANER, Authorized Signatory

NORCOROM INDUSTRIES, SRL

By: _____
Nelu M. Velicescu

ACCEPTED:

LAZARUS ENERGY HOLDINGS, LLC

By: _____
Jonathan Carroll, Director

LAZARUS TEXAS REFINERY I, LLC

By: _____
Jonathan Carroll, Director

EXHIBIT "A" TO
LETTER AGREEMENT
BETWEEN
NATIONAL OIL RECOVERY CORPORATION AND
LAZARUS ENERGY HOLDINGS, LLC AND
LAZARUS TEXAS REFINERY I, LLC

Tract 1

FIELDNOTE DESCRIPTION of a portion of Lots 4 and 5, Block O, Burton and Danforth Subdivision, as shown by map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas, described as follows:

COMMENCING at the southeasterly corner of said Lot 4, being at the intersection of the centerline of Farm-to-Market Road 2725 with the centerline of a 40.00 foot public roadway between Blocks N and O of said subdivision;

THENCE, along the centerline of said 40.00 foot roadway and the southerly boundary of said Lot 4, N. 55° 23' 00" W, at 50.00 feet past the westerly right-of-way of said Farm-to-Market Road, in all 156.12 feet to the POINT OF BEGINNING of this tract;

THENCE, continuing along said centerline and boundary, N 55° 23' 00" W, 503.88 feet to the southwesterly corner of said Lot 5;

THENCE, along the westerly boundary of said Lot 5, N 34° 37' 00" E, at 20.00 feet past a 5/8 inch iron rod found on the northerly right-of-way of said 40.00 foot roadway, in all 685.00 feet to a brass monument in concrete found;
THENCE, S 55° 23' 00" E, 610.00 feet to a 5/8 inch iron rod set on the westerly right-of-way of said Farm-to-Market Road;

THENCE, along said westerly right-of-way, S 34° 37' 00" W, 501.25 feet to a 5/8 inch iron rod found;

THENCE, N 55° 23' 00" W, 106.12 feet to a 5/8 inch iron rod found;

THENCE, S 34° 37' 00" W, at 163.75 feet past a 5/8 inch iron rod found on the northerly right-of-way of said 40.00 foot roadway, in all 183.75 feet to the POINT OF BEGINNING.

CONTAINING 9.145 acres, more or less, of which 0.231 acre is in road right-of-way.

Tract 2

FIELD NOTE DESCRIPTION in all of Lots 1 and 2, and a portion of Lot 3, Block N, and a portion of Lots 1 and 2, Block M, and all of Lot 4, Block II, and a portion of Lot 4, Block JJ, Burton and Danforth Subdivision, as shown by map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas, described as follows:

COMMENCING at the northwesterly corner of said Lot 3, Block N, being at the intersection of the centerline of Farm-to-Market Road 2725 with the centerline of a 40.00 foot roadway between Blocks N and O of said subdivision;

THENCE, along the centerline of said 40.00 foot roadway and the northerly boundary of said Lot 3, S 55°23' 00" E, 50.00 feet to the easterly right-of-way of said Farm-to-Market Road for the POINT OF BEGINNING of this tract;

THENCE, along said easterly right-of-way, S 34° 37' 00" W, at 20.00 feet past a 5/8 inch iron rod set on the southerly right-of-way of said 40.00 foot roadway, at 1300.00 feet past a 5/8 inch iron rod set on the northerly right-of-way of 40.00 foot roadway between Blocks M and N of said subdivision, in all 1320.00 feet to a 5/8 inch iron rod set on the southerly boundary of said Lot 3, Block N, being on the centerline of said 40.00 foot roadway;

THENCE, along said centerline and southerly boundary, S 55° 23' 00" E, 280.00 feet to a 5/8 inch iron rod set at the southeasterly corner of said Lot 3, Block N, being the northwesterly corner of Lot 2, Block M;

THENCE along the westerly boundary of said Lot 2, S 34° 37' 00" W, at 20.00 feet past the southerly right-of-way of said 40.00 foot roadway, in all 660.00 feet to a 5/8 inch iron rod set;

THENCE, S 55° 23' 00" E, at 630.00 feet past the westerly right-of-way of a 60.00 foot roadway between Blocks M and JJ, at 660.00 feet past the centerline of said roadway and boundary between said Blocks M and JJ, in all 690.00 feet to a 5/8 inch iron rod found on the easterly right-of-way of said 60.00 foot roadway;

THENCE, along said easterly right-of-way, N 34° 37' 00" E, 420.89 feet to a 5/8 inch iron rod found;

THENCE, S 57° 11' 36" E, 219.92 feet to a 5/8 inch iron rod found;

THENCE, N 36° 16' 05" E, 252.27 feet to a 5/8 inch iron rod found on the northerly right-of-way of a 40.00 foot roadway between Blocks JJ and II;

THENCE, along said northerly right-of-way, S 55° 23' 00" E, 72.92 feet to a 5/8 inch iron rod set on the boundary between Lots 3 and 4, Block II;

THENCE, along said boundary, N 34° 37' 00" E, at 1280.00 feet pass a 5/8 inch iron rod set on the southerly right-of-way of a 40.00 foot roadway between Blocks II and HH, in all 1300.00 feet to the centerline of said roadway, being the northeasterly corner of said Lot 3, Block II;

THENCE, along said centerline and the boundary between Blocks II and HH, and the boundary between Blocks N and O, N 55° 23' 00" W, 1270.00 feet to the POINT OF BEGINNING.

CONTAINING 50.113 acres, more or less, of which 4.070 acres is in road right-of-way.

Tract 3

Lots 1, 2, and 3, Block II, Burton and Danforth Subdivision, as shown by map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas.

EXHIBIT "B" TO
LETTER AGREEMENT
BETWEEN
NATIONAL OIL RECOVERY CORPORATION AND
LAZARUS ENERGY HOLDINGS, LLC AND
LAZARUS TEXAS REFINERY I, LLC

1. A 10,000 or 12,000 b/d atmospheric crude distillation unit

2. A 30,000 b/d atmospheric crude distillation unit

3. A 20,000 b/d vacuum distillation unit

4. A 15,000 b/d naphtha stabilizer

5. Tankage consisting of 8 storage tanks, with an eventual total capacity of approximately 685,000 barrels of storage

EXHIBIT "C" TO
LETTER AGREEMENT
BETWEEN
NATIONAL OIL RECOVERY CORPORATION AND
LAZARUS ENERGY HOLDINGS, LLC AND
LAZARUS TEXAS REFINERY I, LLC

FIELDNOTES for a 14.24 acre tract of land being all of Lot 1, Bay Block B, the West 509.29 feet of Lot 2, Bay Block 8, the South 130 feet of Lot 4, Bay Block 7, a portion of Ocean Drive and a tract of land between the East boundary of Ocean Drive and Redfish Bay, all as shown on the Burton & Danforth Subdivision map as recorded in Volume 1, Page 3, Plat Records of Aransas County, Texas and a certified copy of such map is recorded in Volume 152, Page 1 of the San Patricio County, Texas Deed Records;

BEGINNING at a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the West corner of said Lot 2 on the Southeast right-of-way line of Bay Avenue (60 foot wide right-of-way with variable width caliche surface) for the West corner of this survey;

THENCE North 34° 37' 00" East, along said Southeast right-of-way line, at 330.00 feet pass a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the North corner of said Lot 2 and the West corner of said Lot 1, in all a distance of 640.00 feet to a 1/2 inch iron rod found (marked R.P.L.S. 1523) on the Southwest right-of-way line of Sun Ray Road (40 foot wide right-of-way with 22 foot wide asphalt surface) for the North corner of said Lot 1 and a corner of this survey;

THENCE South 55° 30' 35" East along said Southwest right-of-way line at 901.00 feet a 1/2 inch iron rod found (marked R.P L.S. 1523) bears South 34° 29' 25" West 2.0 feet, in all a distance of 913.24 feet to the West right-of-way line of Ocean Drive for the East corner of said Lot 1 and inside corner of this survey;

THENCE North 16° 32 55" East, along the West right-of-way line of Ocean Drive (80 foot wide right-of-way unimproved) 42.04 feet across Sun Ray Road to a 5/8 inch iron rod found at the South corner of Lot 4, Block 7 for an inside corner of this survey;

THENCE North 55° 30' 35" West along the Northeast right-of-way line of Sun Ray Road, at 13.46 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.0 feet in all a distance of 900.19 feet to a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the West corner of said Lot 4 on the Southeast right-of-way line of Bay Avenue, for a corner of this survey;

THENCE North 34° 37' 00" East along said Southeast right-of-way line 130.00 feet to a 3/4 inch iron rod with flattened top found for the North corner of this survey;

THENCE South 55° 30' 35" East, parallel to the Northeast right-of-way line of Sun Ray Road and 130 feet distant therefrom measured at right angles thereto, at 840.41 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West, 1.85 feet at 857.83 feet cross the West right-of-way line of Ocean Drive, at 861.02 feet pass a 5/8 inch iron rod in concrete found, at 941.92 feet cross the East right-of-way line of Ocean Drive in all a distance of 1,038.69 feet to the shoreline of Red Fish Bay;

THENCE along the shoreline of Red Fish Bay, South 20° 50' 26" West at 1.81 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears North 69° 09' 34" West 2.24 feet, in all a distance of 89.75 feet to an angle point in said shoreline;

THENCE continuing along said shoreline South 00° 40' 20" West 80.69 feet and thence South 13° 50' 36" East 48.81 feet to the beginning of a concrete bulkhead;

THENCE along the outside face of said concrete bulkhead as follows:

South 73° 37' 00" East 15.96 feet;
South 20° 16' 30" West 29.72 feet;
North 71° 29' 02" West 48.32 feet;
South 18° 17' 15" West 78.59 feet;
South 71° 03' 51" East 53.00 feet and South 18° 42' 11" West 193.54 feet to the end of said concrete bulkhead;

THENCE continuing with the shoreline of Red Fish Bay as follows:

South 40° 43' 53" West 74.95 feet;
South 50° 50' 46" West 42.44 feet;
South 11° 18' 15" West 141.77 feet and South 24° 58' 51" West 93.85 feet to a point on the Southeasterly extension of the common boundary of Lots 2 and 3 Bay Block 8 for the South corner of this survey;

THENCE with a wire fence along said Southeasterly extension, North 55° 30' 35" West at 82.04 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.69 in all a distance of 132.15 feet to the centerline of Ocean Drive for a corner of this survey, from which corner a 2 inch iron pipe found on the West right-of-way line of Ocean Drive bears North 55° 30' 35" West 42.04 feet and thence South 16° 32' 55" West 1.47 feet;

THENCE with the centerline of Ocean Drive North 16° 32' 55" East, 346.87 feet to a point on the Southeasterly extension of the common boundary of Lots 1 and 2, Bay Block 8, for an inside corner of this survey;

THENCE along last mentioned Southeasterly extension North 55° 30' 35" West 42.04 feet to the South corner of said Lot 1 and the East corner of said Lot 2, on the West right-of-way line of Ocean Drive;

THENCE North 55° 30' 35" West along the common boundary of said Lots 1 and 2 at 2.64 feet, a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.77 feet in all a distance of 505.01 feet for an inside corner of this survey;

THENCE South 34° 37' 00" West at 1.12 feet pass a 1/2 inch iron rod found (marked R.P.L.S. 1523) in all a distance of 330.0 feet to a wire fence on the common boundary of said Lots 2 and 3, Bay Block 8 for a corner of this survey, from which corner a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 37' 00" West 1.12 feet;

THENCE North 55° 30' 35" West with said wire fence on the common boundary of said Lots 2 and 3,509.29 feet to the POINT OF BEGINNING, save and except 2.5 acres conveyed from National Oil Recovery Corporation to Pi Energy Corporation, by Special Warranty Deed, dated August 17, 1998, to which Special Warranty Deed reference is hereby made for a description of said 2.5 acres of land.

EXHIBIT "D" TO
LETTER AGREEMENT
BETWEEN
NATIONAL OIL RECOVERY CORPORATION AND
LAZARUS ENERGY HOLDINGS, LLC AND
LAZARUS TEXAS REFINERY I, LLC

Permitted Encumbrances
Tracts 1, 2 & 3

1. Rights of mineral estate owners and to the rights of those that hold under them;

2. Easement, dated April 19, 1978, from Uni Oil, Inc. to Central Power and Light Company, recorded in Volume 886, Page 89, Deed Records, San Patricio County, Texas;

3. Road rights-of-way as shown on the Burton & Danforth Subdivision Map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas;

4. Easement, dated February 8, 1979, from Uni Oil Co. to Central Power and Light Company, recorded in Volume 807, Page 299, Deed Records, San Patricio County, Texas;

5. Agreement, dated February 2, 1965, from Brashear-Irwin Industries, Inc. to T.L. Bishop, recorded in Volume 311, Page 124, Deed Records, San Patricio County, Texas;

6. Term and conditions of reservation of fee title to one certain fresh water line along with easement relative thereto as set out in Deed, dated June 22, 1968, from Brashear Industries, Inc. to L.V. Elliott, Trustee, recorded in Volume 372, Page 161, Deed Records, San Patricio County, Texas;

7. Assignment Of Covenant to extend channel, dated October 25, 1977, from Mark P. Banjavich, et al, to T. Michael Hajecate, et al, recorded in Volume 567, Page 469, Deed Records, San Patricio County, Texas;

8. Right-of-Way, dated July 15, 1952, from Conn Brown to United Gas Pipe Line Company, recorded in Volume 176, Page 485, Deed Records, San Patricio County, Texas;

9. Right-of-Way, dated September 23, 1953, from E.D. Richmond, et al, to Sunray Mid-Continent Oil Company, recorded in Volume 297, Page 283, Deed Records, San Patricio County, Texas;

10. Right-of-Way, dated March 16, 1962, from E.D. Richmond, Jr., et al, to the State of Texas, recorded in Volume 276, Page 109, Deed Records, San Patricio County, Texas;

11. Right-of-Way, dated July 3, 1934, from R.K. Coleman to San Patricio County, recorded in Volume 105, Page 497, Deed Records, San Patricio County, Texas;

12. Oil, gas and mineral leases, reservation of mineral interests, pooling arrangements, right-of-way agreements, easements, and mineral deeds affecting the Property and of record in the office of the County Clerk of San Patricio County, Texas.

Barge Dock

Any and all restrictions, covenants, easements, oil, gas and mineral leases, oil, gas and mineral deeds, oil, gas and mineral reservations, rights-of-way, if any, pertaining to the Barge Dock, but only to the extent any of the foregoing are shown of record in the office of the County Clerk of San Patricio County and are still in effect with respect to the Barge Dock, and to all zoning laws, regulations and ordinances of municipal and/or governmental authorities, if any, but only to the extent they are still in effect and relate to the Barge Dock.

NATIONAL OIL RECOVERY CORPORATION
2001 OCEAN BOULEVARD, #520
LONG ISLAND, NEW YORK 11509
(516) 239-8735

February 23, 2012

Mr. Jonathan Carroll
Director
Lazarus Energy Holdings, LLC
801 Travis, Suite 2100
Houston, Texas 77002

Mr. Jonathan Carroll
Director
Lazarus Texas Refinery I, LLC
801 Travis, Suite 2100
Houston, Texas 77002

In Re: Falcon Refinery

Gentlemen:

Representatives of National Oil Recovery Corporation ("Norco") and Lazarus Energy Holdings, LLC, a Delaware limited liability company authorized to do business in Texas ("LEH") have discussed the prospect of LEH or a subsidiary thereof, Lazarus Texas Refinery I, LLC, a Delaware limited liability company authorized to do business in Texas ("LTR") purchasing from Norco and Norcorom Industries, SRL, a related company ("Related Company"), Norco's land, equipment, pipelines and barge facility located in Ingleside, San Patricio County, Texas, and commonly known as the "Falcon Refinery." LEH and LTR are aware that the Falcon Refinery has been designated by the Environmental Protection Agency ("EPA") as a Superfund Site and is subject to remediation and clean-up in accordance with two Administrative Orders On Consent, dated June 9, 2004, between the EPA and Norco, to which reference is hereby made for all purposes (the "AOC's"), as well as an Agreed Order for resumption of removal work, dated May 2, 2011 ("Removal Action Agreed Order"), and an Agreed Order for resumption of Remedial Investigation and Feasibility Study, dated September 26, 2011 ((RI/FS Agreed Order") (collectively, the "Agreed Orders"). In addition LEH and LTR are aware that Norco has received from the EPA a Notice Of Deficiencies, dated October 26, 2011, relative to the RI/FS Agreed Order, and since then the EPA has taken over the work contemplated by the RI/FS Agreed Order and related AOC.

Norco and LEH and LTR have negotiated the sale and conveyance of the Falcon Refinery to LTR pursuant to the following terms and provisions:

ARTICLE I, Definitions. For purposes of this Letter Agreement, the following terms shall have the meanings set forth below:

1.1 Refinery Land. Shall mean the surface only of the certain 87.258 acres of land, more or less, situated in San Patricio County, Texas, and described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes (the "Refinery Land'), together with all improvements located thereon, and all and singular the rights and appurtenances pertaining to the Refinery Land, including, but not limited to, all of Norco's rights, titles and interest, if any, in and to all adjacent easements, streets, alleys, rights of way, rights of ingress and egress, strips and gores.

1.2. Refinery Equipment. Shall mean in addition to the improvements located on the Refinery Land, all of the personal property, fixtures and equipment described in Exhibit "B," attached hereto and made a part hereof for all purposes (the "Refinery Equipment").

1.3. Barge Dock. Shall mean the surface only of the certain 14.24 acres of land, more or less, situated in San Patricio County, Texas, and described by metes and bounds in the Exhibit "C," attached hereto and made a part hereof for all purposes (the "Barge Dock"), together with all improvements located thereon, and all and singular the rights and appurtenances pertaining to the Barge Dock.

1.4. Pipelines And Equipment. Shall mean all pipes, pipelines, valves, metering equipment, pumps, if any, in, on or under (i) the Refinery Land, (ii) the Refinery Equipment, and (iii) the Barge Dock (collectively the "Pipelines And Equipment").

1.5. Superior Lease Agreement Shall mean the certain Lease Agreement, dated January 16, 2006, by and between Norco and Superior Crude Gathering, Inc. ("Superior") (the "Superior Lease Agreement"), as amended from time to time, true and correct copies of which have been delivered to LEH, the receipt of which is hereby acknowledged by LEH.

1.6. Permitted Encumbrances. Shall mean all as set out in Exhibit "D," attached hereto and made a part hereof for all purposes.

1.7. The items described in 1.1 through 1.5, above, are herein collectively called or referenced to as the "Property."

ARTICLE II, Purchase Price, Assumption Of Obligations, Indemnities.

2.1. The purchase price for the Property shall consist of LTR paying Norco and a Related Company a total of Three Million Five Hundred Thousand Dollars ($3,500,000.00) cash, in the manner and as set forth in 2.3. hereof, and LEH and LTR, jointly and severally, assuming and being solely responsible for costs, expenses and penalties in any way relating to (i) the EPA mandated clean-up contemplated and provided for under the AOC's and Agreed Orders, currently, including but not limited to, and consisting of: (A) estimated Six Hundred Fifty-Five Thousand Dollars ($655,000.00) for the Removal Action clean-up; (B)

estimated Five Hundred Thousand Dollars ($500,000.00) for the RI/FS clean-up; (C) estimated Three Hundred Seventy-Five Thousand Dollars ($375,000.00) for EPA monitoring costs; and (D) estimated Five Hundred Thousand Dollars ($500,000.00) EPA penalty; and (E) estimated Two Hundred Fifty Thousand Dollars ($250,000.00) rebate to Superior as set forth in 4.3. hereof.

2.2. LEH and LTR acknowledge that the estimated clean-up, EPA monitoring costs and EPA penalty set out in 2.1., above, are Norco's best estimates of such costs and penalty arrived at in reliance upon current information and data supplied by Norco's clean-up contractor, TRC Environmental, and the EPA as to the EPA penalty and monitoring costs, and that such costs and penalty may increase over time as the work proceeds, especially in view of the fact the EPA is currently in charge of the RI/FS clean-up. Notwithstanding anything in this Letter Agreement to the contrary, as part of the consideration for Norco conveying the Property to LTR, LEH and LTR, jointly and severally, shall be solely responsible to the exclusion of Norco and/or a Related Company for any and all costs and penalties attributable to, directly or indirectly, the clean-up under the AOC's and Agreed Orders and the rebate to Superior, with the further understanding that any sums paid out by LEH or LTR to complete the AOC's and Agreed Orders to the EPA's complete satisfaction, and to refund Superior per 4.3., below, less than the estimated costs, expenses, penalties and rebate to Superior set forth in 2.1., above, shall inure to LEH's and/or LTR's benefit.

2.3. The Three Million Five Hundred Thousand Dollars ($3,500,000.00) cash will be represented by promissory notes (the "Notes") made payable to Norco or order, and/or a Related Company, with interest on a reducing principal at the rate of five percent (5%) per annum, and payable in agreed monthly installments. The Notes will be secured in their payment by liens reasonably satisfactory to Norco and/or its Related Company.

2.4. As security for the AOC's, Norco caused two (2) letters of credit to be issued in favor of the EPA, each in the amount of Five Hundred Thousand Dollars ($500,000.00). Norco is advised by the EPA that the EPA has cashed in said letters of credit and is holding the cash proceeds in EPA controlled bank accounts to be used as needed. After the clean-up is contemplated by the AOC's has been completed, any funds remaining in the EPA's accounts shall remain the property of and be payable to Norco to the exclusion of LEH and LTR.

2.5. As part of the consideration for Norco and/or a Related Company conveying the Property to LTR in accordance with the terms and provisions of this Letter Agreement, LEH and LTR, jointly and severally, do hereby unequivocally state as follows: THAT THEY HAVE CONDUCTED THEIR OWN INDEPENDENT INVESTIGATION OF THE PROPERTY, AND ARE SATISFIED THAT THE PROPERTY IS SUITABLE FOR THE PURPOSES FOR WHICH LEH AND/OR LTR INTENDS TO USE THE PROPERTY;

LEH AND LTR, JOINTLY AND SEVERALLY, ACKNOWLEDGE THAT NEITHER NORCO NOR ANY AGENT OF NORCO NOR ANY RELATED COMPANY HAS MADE ANY WARRANTIES OR REPRESENTATIONS AS TO THE PHYSICAL CONDITION, LAYOUT, ENVIRONMENTAL CONDITION, OPERATION OR ANY OTHER MATTER OR THING AFFECTING OR RELATING TO THE PROPERTY OR THIS LETTER AGREEMENT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS LETTER AGREEMENT, AND THAT LEH AND LTR ARE NOT RELYING UPON ANY STATEMENT OR REPRESENTATION MADE BY ANY OTHER PERSON OR ENTITY THAT IS NOT EMBODIED IN THIS LETTER AGREEMENT. LEH AND LTR, JOINTLY AND SEVERALLY, HEREBY (A) EXPRESSLY ACKNOWLEDGE THAT NO SUCH WARRANTIES OR REPRESENTATIONS HAVE BEEN MADE EXCEPT AS SPECIFICALLY SET FORTH IN THIS LETTER AGREEMENT, (B) AGREE TO TAKE AND ACCEPT THE PROPERTY "AS IS" SUBJECT TO ITS CONDITIONS ON THE CLOSING DATE (SUBJECT TO THE TERMS OF THIS LETTER AGREEMENT CONCERNING TITLE), AND (C) AGREE THAT THE PROPERTY IS SATISFACTORY TO LEH AND/OR LTR, JOINTLY AND SEVERALLY, IN ALL RESPECTS. LEH AND LTR, JOINTLY AND SEVERALLY, ACKNOWLEDGE THAT NORCO OR ITS RELATED COMPANY IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR OTHER INFORMATION PERTAINING TO THE PROPERTY OR ITS OPERATION OR ANY OTHER MATTER OR THINGS FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR ANY OTHER PERSON, UNLESS SPECIFICALLY SET FORTH HEREIN. THE PROVISIONS OF THIS SECTION 2.5. SHALL SURVIVE THE CLOSING.

2.6. As additional consideration for Norco and/or the Related Company conveying the Property to LTR, LEH and LTR, jointly and severally, do hereby agree to INDEMNIFY, DEFEND AND HOLD HARMLESS NORCO, ITS RELATED COMPANY AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS AND ATTORNEYS (COLLECTIVELY THE "INDEMNIFIED PARTIES"), FROM ANY AND ALL LIABILITY, LIENS, DEMANDS, COSTS, JUDGMENTS, SUITS, EXPENSES AND CLAIMS OF ANY KIND OR CHARACTER ARISING OUT OF, IN CONNECTION WITH, OR RELATING IN WHOLE OR IN PART TO OR IN ANY WAY CONNECTED WITH (A) THE OPERATION, OWNERSHIP, CUSTODY OR CONTROL OF THE PROPERTY SUBSEQUENT TO THE CLOSING AND/OR (B) ANY OPERATION OR ACTIVITY HEREAFTER CONDUCTED BY LEH AND/OR LTR, OR ANY OF THEIR AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES, OR INVITEES, IN, ON, ABOUT, UNDER, OR PERTAINING TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR INJURY OR DEATH OF ANY PERSONS OR DAMAGE, LOSS OR DESTRUCTION OF ANY PROPERTY, REAL OR PERSONAL, UNDER ANY

THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHERWISE, WHICH HAS OCCURRED OR RELATES TO PERIODS OF TIME ON, OR AFTER THE CLOSING. LEH AND LTR, JOINTLY AND SEVERALLY, FURTHER COVENANT AND AGREE TO DEFEND ANY SUITS BROUGHT AGAINST ANY OF THE INDEMNIFIED PARTIES ON ACCOUNT OF SAID CLAIMS AND TO PAY ANY JUDGMENTS AGAINST ANY OR ALL OF THE INDEMNIFIED PARTIES RESULTING FROM ANY SUCH SUIT OR SUITS, TOGETHER WITH ALL COSTS AND EXPENSES RELATIVE TO ANY SUCH CLAIMS, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES AND COURT COSTS. EACH OF THE INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO PARTICIPATE AT ITS OWN COST AND EXPENSE IN THE DEFENSE OF ANY SUIT OR CLAIM IN WHICH THEY (OR ANY OF THEM) MAY BE A PARTY WITHOUT RELIEVING LEH AND/OR LTR OF THEIR OBLIGATIONS HEREUNDER.

THE FOREGOING INDEMNITY SHALL APPLY WHETHER OR NOT ARISING OUT OF THE SOLE, JOINT, OR CONCURRENT NEGLIGENCE, FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES AND SHALL APPLY, WITHOUT LIMITATION, TO ANY LIABILITY IMPOSED UPON ANY OF THE INDEMNIFIED PARTIES AS A RESULT OF ANY THEORY OF STRICT LIABILITY OR ANY OTHER DOCTRINE OF LAW OR EQUITY.

2.7. ALL REPRESENTATIONS, COVENANTS, WARRANTIES AND INDEMNITIES MADE HEREIN BY THE PARTIES SHALL BE CONTINUING AND SHALL BE TRUE AND CORRECT ON AND AS OF THE DATE OF CLOSING WITH THE SAME FORCE AND EFFECT AS IF MADE AT THAT TIME (AND SHALL INURE TO THE BENEFIT OF THE RESPECTIVE SUCCESSORS AND ASSIGNS OF THE PARTIES), AND ALL OF SUCH REPRESENTATIONS, COVENANTS, WARRANTIES, AND INDEMNITIES SHALL SURVIVE THE CLOSING AND THE DELIVERY OF THE CLOSING DOCUMENTS.

ARTICLE III, Closing.

3.1. At the closing, which is scheduled for February 29, 2012, Norco and the Related Company shall convey the Refinery Land, the Refinery Equipment, the Barge Dock and Pipelines And Equipment free and clear of all liens, claims or other encumbrances except only for the Superior Lease Agreement and other "Permitted Encumbrances." Said conveyance shall contain the following provisions and shall be signed by LTR acknowledging its acceptance of the language of such provisions:

GRANTOR HAS EXECUTED AND DELIVERED THIS DEED AND HAS GRANTED, BARGAINED, SOLD AND CONVEYED THE PROPERTY, AND GRANTEE HAS ACCEPTED THIS DEED AND HAS PURCHASED THE PROPERTY, AS IS, WHERE IS, AND WITH ALL FAULTS, IF ANY, AND

WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO (A) THE CONDITION OF THE PROPERTY OR ANY ELEMENT THEREOF, INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) THE NATURE OR QUALITY OR CONSTRUCTION, STRUCTURAL DESIGN OR ENGINEERING OF THE IMPROVEMENTS; (C) THE QUALITY OF THE LABOR AND MATERIALS INCLUDED IN THE IMPROVEMENTS, (D) THE SOIL CONDITIONS, DRAINAGE OR OTHER CONDITIONS EXISTING AT THE PROPERTY WITH RESPECT TO ANY PARTICULAR PURPOSE OR BY ANY DESCRIPTION OF THE PROPERTY; (E) ALL WARRANTIES CREATED BY AN AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY; (F) THE PRESENCE ON THE PROPERTY OR RELEASED FROM THE PROPERTY OR SURROUNDING AREAS, OF ANY HAZARDOUS SUBSTANCES, SOLID TOXIC CHEMICALS OR OTHER MATERIALS; AND (G) ALL OTHER WARRANTIES AND REPRESENTATIONS WHATSOEVER, EXCEPT THE WARRANTY OF TITLE EXPRESSLY SET FORTH HEREIN.

3.2. A Bill of Sale, covering and conveying the Refinery Equipment and the Pipelines And Equipment "AS IS," "WHERE IS" and 'WITH ALL FAULTS" in the form substantially the same as that attached hereto as Exhibit "G" and made a part hereof.

3.3. An Assignment without recourse of all of Norco's rights, titles, interest and obligations in, to and under the Superior Lease Agreement in the form substantially the same as that attached hereto as Exhibit "H" and made a part hereof.

3.4. Norco and the Related Company and LEH and/or LTR agree to execute and deliver at the Closing or cause to be executed and delivered at any time thereafter such other documents as the other party hereto may reasonably require in order to fully consummate the purchase, sale, conveyance, assumption of liabilities and indemnities contemplated hereunder.

3.5. In addition, LEH and/or LTR, jointly and severaly, shall assume and be solely responsible for all of Norco's obligations in, to and under the Superior Lease Agreement and shall indemnify and hold harmless, jointly and severally, the Indemnified Parties arising in any way out of and/or related to, directly or indirectly, the Superior Lease Agreement.

3.6. Notwithstanding anything to the contrary in this Letter Agreement, LEH acknowledges that it has requested title to the Property be conveyed to LTR as an

accommodation to LEH. In view of such, LEH does hereby guarantee (A) the prompt payment of the Notes in accordance with their terms, (B) the prompt and faithful performance of all of the obligations imposed on LTR under the lien documents, and (C) the prompt and faithful performance of all of the other obligations assumed by and/or imposed on LTR under this Letter Agreement, including, but not limited to, the AOC's and the Agreed Orders.

ARTICLE IV, Miscellaneous.

4.1. Clean-Up Payments. Retroactive to November 23, 2011, as part of the ongoing consideration for the conveyance of the Property to LTR, LEH and LTR, jointly and severally, shall fund on a current basis the clean-up program being conducted by Norco pursuant to the Removal Action Agreed Order and related AOC, except for the escrow amounts required under the Agreed Orders. Such funding shall include, but not be limited to, the items set forth in paragraphs 9 and 10 of the RI/FS Agreed Order. LEH and Norco, subsequent to the Closing, shall use their combined best efforts to cause the EPA to reinstate the RI/FS Agreed Order in favor of Norco the RI/FS Agreed Order, and if successful, LEH and LTR, jointly and severally, shall be solely responsible for (and fund on a current basis), costs also incurred in connection with clean-up activities required under the RI/FS Agreed Order and related AOC. If LEH and Norco are not successful in causing the EPA to reinstate the RI/FS Agreed Order in favor of Norco, LEH and/or LTR, jointly and severally, nonetheless agree to indemnify and hold harmless Norco from and against any and all claims, demands and/or causes of action reasonably related to the Agreed Orders and the AOC's and made by the EPA against Norco.

4.2. TRC Contractor. TRC will continue as contractor to complete the clean-up program, with a contractor of LEH's selection providing oversight of the clean-up work and who will report directly to LEH and will look to LEH only for its compensation for work to be performed at the Falcon Refinery and which shall not be considered a clean-up cost related to the AOC's and Agreed Orders.

4.3. Superior Crude Gathering, Inc. Lease Agreement: LEH and LTR, jointly and severally, acknowledge that the Falcon Refinery is subject to a Lease Agreement with Superior Crude Gathering, Inc. Under the terms of the Superior Lease Agreement, LEH and/or LTR, upon the closing of the conveyance contemplated hereunder, would have the right to terminate the Superior Lease Agreement, with Superior having Two Hundred Seventy (270) days to remove its operation from the Falcon Refinery. The Superior Lease Agreement is scheduled to terminate by its own terms in June of 2013, and has paid Norco in advance rent covering that period of time from the present up until the termination of the Lease Agreement. Any cash consideration that must be paid to Superior in connection with the termination of the Superior Lease Agreement shall be payable by LEH and/or LTR, jointly and severally, pursuant to the Superior Lease Agreement.

4.4. Norco and LEH agree that this Letter Agreement supersedes and takes the place of the certain letter agreement, dated November 23, 2011, which letter agreement is hereby rendered null and void.

If the foregoing correctly sets forth the agreement of the parties as to the subject matter of this Letter Agreement, then please sign duplicate originals of this Letter Agreement in the space provided below and return one executed duplicate original to the undersigned.

NATIONAL OIL RECOVERY CORPORATION

By: _____
R.F. BERGNER, Authorized Signatory

NORCOROM INDUSTRIES, SRL

By: _____
Nelu M. Velicescu

ACCEPTED:

LAZARUS ENERGY HOLDINGS, LLC

By: _____
Jonathan Carroll, Director

LAZARUS TEXAS REFINERY I, LLC

By: _____
Jonathan Carroll, Director

EXHIBIT "A" TO
LETTER AGREEMENT
BETWEEN
NATIONAL OIL RECOVERY CORPORATION AND
LAZARUS ENERGY HOLDINGS, LLC AND
LAZARUS TEXAS REFINERY I, LLC

Tract 1

FIELDNOTE DESCRIPTION of a portion of Lots 4 and 5, Block O, Burton and Danforth Subdivision, as shown by map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas, described as follows:

COMMENCING at the southeasterly corner of said Lot 4, being at the intersection of the centerline of Farm-to-Market Road 2725 with the centerline of a 40.00 foot public roadway between Blocks N and O of said subdivision;

THENCE, along the centerline of said 40.00 foot roadway and the southerly boundary of said Lot 4, N. 55° 23' 00" W, at 50.00 feet past the westerly right-of-way of said Farm-to-Market Road, in all 156.12 feet to the POINT OF BEGINNING of this tract;

THENCE, continuing along said centerline and boundary, N 55° 23' 00" W, 503.88 feet to the southwesterly corner of said Lot 5;

THENCE, along the westerly boundary of said Lot 5, N 34° 37' 00" E, at 20.00 feet past a 5/8 inch iron rod found on the northerly right-of-way of said 40.00 foot roadway, in all 685.00 feet to a brass monument in concrete found;
THENCE, S 55° 23' 00" E, 610.00 feet to a 5/8 inch iron rod set on the westerly right-of-way of said Farm-to-Market Road;

THENCE, along said westerly right-of-way, S 34° 37' 00" W, 501.25 feet to a 5/8 inch iron rod found;

THENCE, N 55° 23' 00" W, 106.12 feet to a 5/8 inch iron rod found;

THENCE, S 34° 37' 00" W, at 163.75 feet past a 5/8 inch iron rod found on the northerly right-of-way of said 40.00 foot roadway, in all 183.75 feet to the POINT OF BEGINNING.

CONTAINING 9.145 acres, more or less, of which 0.231 acre is in road right-of-way.

Tract 2

FIELD NOTE DESCRIPTION in all of Lots 1 and 2, and a portion of Lot 3, Block N, and a portion of Lots 1 and 2, Block M, and all of Lot 4, Block II, and a portion of Lot 4, Block JJ, Burton and Danforth Subdivision, as shown by map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas, described as follows:

COMMENCING at the northwesterly corner of said Lot 3, Block N, being at the intersection of the centerline of Farm-to-Market Road 2725 with the centerline of a 40.00 foot roadway between Blocks N and O of said subdivision;

THENCE, along the centerline of said 40.00 foot roadway and the northerly boundary of said Lot 3, S 55°23' 00" E, 50.00 feet to the easterly right-of-way of said Farm-to-Market Road for the POINT OF BEGINNING of this tract;

THENCE, along said easterly right-of-way, S 34° 37' 00" W, at 20.00 feet past a 5/8 inch iron rod set on the southerly right-of-way of said 40.00 foot roadway, at 1300.00 feet past a 5/8 inch iron rod set on the northerly right-of-way of 40.00 foot roadway between Blocks M and N of said subdivision, in all 1320.00 feet to a 5/8 inch iron rod set on the southerly boundary of said Lot 3, Block N, being on the centerline of said 40.00 foot roadway;

THENCE, along said centerline and southerly boundary, S 55° 23' 00" E, 280.00 feet to a 5/8 inch iron rod set at the southeasterly corner of said Lot 3, Block N, being the northwesterly corner of Lot 2, Block M;

THENCE along the westerly boundary of said Lot 2, S 34° 37' 00" W, at 20.00 feet past the southerly right-of-way of said 40.00 foot roadway, in all 660.00 feet to a 5/8 inch iron rod set;

THENCE, S 55° 23' 00" E, at 630.00 feet past the westerly right-of-way of a 60.00 foot roadway between Blocks M and JJ, at 660.00 feet past the centerline of said roadway and boundary between said Blocks M and JJ, in all 690.00 feet to a 5/8 inch iron rod found on the easterly right-of-way of said 60.00 foot roadway;

THENCE, along said easterly right-of-way, N 34° 37' 00" E, 420.89 feet to a 5/8 inch iron rod found;

THENCE, S 57° 11' 36" E, 219.92 feet to a 5/8 inch iron rod found;

THENCE, N 36° 16' 05" E, 252.27 feet to a 5/8 inch iron rod found on the northerly right-of-way of a 40.00 foot roadway between Blocks JJ and II;

THENCE, along said northerly right-of-way, S 55° 23' 00" E, 72.92 feet to a 5/8 inch iron rod set on the boundary between Lots 3 and 4, Block II;

THENCE, along said boundary, N 34° 37' 00" E, at 1280.00 feet pass a 5/8 inch iron rod set on the southerly right-of-way of a 40.00 foot roadway between Blocks II and HH, in all 1300.00 feet to the centerline of said roadway, being the northeasterly corner of said Lot 3, Block II;

THENCE, along said centerline and the boundary between Blocks II and HH, and the boundary between Blocks N and O, N 55° 23' 00" W, 1270.00 feet to the POINT OF BEGINNING.

CONTAINING 50.113 acres, more or less, of which 4.070 acres is in road right-of-way.

Tract 3

Lots 1, 2, and 3, Block II, Burton and Danforth Subdivision, as shown by map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas.

EXHIBIT "B" TO
LETTER AGREEMENT
BETWEEN
NATIONAL OIL RECOVERY CORPORATION AND
LAZARUS ENERGY HOLDINGS, LLC AND
LAZARUS TEXAS REFINERY I, LLC

1. A 10,000 or 12,000 b/d atmospheric crude distillation unit
2. A 30,000 b/d atmospheric crude distillation unit
3. A 20,000 b/d vacuum distillation unit
4. A 15,000 b/d naphtha stabilizer
5. Tankage consisting of 8 storage tanks, with an eventual total capacity of approximately 685,000 barrels of storage

EXHIBIT "C" TO
LETTER AGREEMENT
BETWEEN
NATIONAL OIL RECOVERY CORPORATION AND
LAZARUS ENERGY HOLDINGS, LLC AND
LAZARUS TEXAS REFINERY I, LLC

FIELDNOTES for a 14.24 acre tract of land being all of Lot 1, Bay Block B, the West 509.29 feet of Lot 2, Bay Block 8, the South 130 feet of Lot 4, Bay Block 7, a portion of Ocean Drive and a tract of land between the East boundary of Ocean Drive and Redfish Bay, all as shown on the Burton & Danforth Subdivision map as recorded in Volume 1, Page 3, Plat Records of Aransas County, Texas and a certified copy of such map is recorded in Volume 152, Page 1 of the San Patricio County, Texas Deed Records;

BEGINNING at a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the West corner of said Lot 2 on the Southeast right-of-way line of Bay Avenue (60 foot wide right-of-way with variable width caliche surface) for the West corner of this survey;

THENCE North 34° 37' 00" East, along said Southeast right-of-way line, at 330.00 feet pass a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the North corner of said Lot 2 and the West corner of said Lot 1, in all a distance of 640.00 feet to a 1/2 inch iron rod found (marked R.P.L.S. 1523) on the Southwest right-of-way line of Sun Ray Road (40 foot wide right-of-way with 22 foot wide asphalt surface) for the North corner of said Lot 1 and a corner of this survey;

THENCE South 55° 30' 35" East along said Southwest right-of-way line at 901.00 feet a 1/2 inch iron rod found (marked R.P L.S. 1523) bears South 34° 29' 25" West 2.0 feet, in all a distance of 913.24 feet to the West right-of-way line of Ocean Drive for the East corner of said Lot 1 and inside corner of this survey;

THENCE North 16° 32 55" East, along the West right-of-way line of Ocean Drive (80 foot wide right-of-way unimproved) 42.04 feet across Sun Ray Road to a 5/8 inch iron rod found at the South corner of Lot 4, Block 7 for an inside corner of this survey;

THENCE North 55° 30' 35" West along the Northeast right-of-way line of Sun Ray Road, at 13.46 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.0 feet in all a distance of 900.19 feet to a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the West corner of said Lot 4 on the Southeast right-of-way line of Bay Avenue, for a corner of this survey;

THENCE North 34° 37' 00" East along said Southeast right-of-way line 130.00 feet to a 3/4 inch iron rod with flattened top found for the North corner of this survey;

THENCE South 55° 30' 35" East, parallel to the Northeast right-of-way line of Sun Ray Road and 130 feet distant therefrom measured at right angles thereto, at 840.41 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West, 1.85 feet at 857.83 feet cross the West right-of-way line of Ocean Drive, at 861.02 feet pass a 5/8 inch iron rod in concrete found, at 941.92 feet cross the East right-of-way line of Ocean Drive in all a distance of 1,038.69 feet to the shoreline of Red Fish Bay;

THENCE along the shoreline of Red Fish Bay, South 20° 50' 26" West at 1.81 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears North 69° 09' 34" West 2.24 feet, in all a distance of 89.75 feet to an angle point in said shoreline;

THENCE continuing along said shoreline South 00° 40' 20" West 80.69 feet and thence South 13° 50' 36" East 48.81 feet to the beginning of a concrete bulkhead;

THENCE along the outside face of said concrete bulkhead as follows:

South 73° 37' 00" East 15.96 feet;
South 20° 16' 30" West 29.72 feet;
North 71° 29' 02" West 48.32 feet;
South 18° 17' 15" West 78.59 feet;
South 71° 03' 51" East 53.00 feet and South 18° 42' 11" West 193.54 feet to the end of said concrete bulkhead;

THENCE continuing with the shoreline of Red Fish Bay as follows:

South 40° 43' 53" West 74.95 feet;
South 50° 50' 46" West 42.44 feet;
South 11° 18' 15" West 141.77 feet and South 24° 58' 51" West 93.85 feet to a point on the Southeasterly extension of the common boundary of Lots 2 and 3 Bay Block 8 for the South corner of this survey;

THENCE with a wire fence along said Southeasterly extension, North 55° 30' 35" West at 82.04 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.69 in all a distance of 132.15 feet to the centerline of Ocean Drive for a corner of this survey, from which corner a 2 inch iron pipe found on the West right-of-way line of Ocean Drive bears North 55° 30' 35" West 42.04 feet and thence South 16° 32' 55" West 1.47 feet;

THENCE with the centerline of Ocean Drive North 16° 32' 55" East, 346.87 feet to a point on the Southeasterly extension of the common boundary of Lots 1 and 2, Bay Block 8, for an inside corner of this survey;

THENCE along last mentioned Southeasterly extension North 55° 30' 35" West 42.04 feet to the South corner of said Lot 1 and the East corner of said Lot 2, on the West right-of-way line of Ocean Drive;

THENCE North 55° 30' 35" West along the common boundary of said Lots 1 and 2 at 2.64 feet, a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.77 feet in all a distance of 505.01 feet for an inside corner of this survey;

THENCE South 34° 37' 00" West at 1.12 feet pass a 1/2 inch iron rod found (marked R.P.L.S. 1523) in all a distance of 330.0 feet to a wire fence on the common boundary of said Lots 2 and 3, Bay Block 8 for a corner of this survey, from which corner a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 37' 00" West 1.12 feet;

THENCE North 55° 30' 35" West with said wire fence on the common boundary of said Lots 2 and 3,509.29 feet to the POINT OF BEGINNING, save and except 2.5 acres conveyed from National Oil Recovery Corporation to Pi Energy Corporation, by Special Warranty Deed, dated August 17, 1998, to which Special Warranty Deed reference is hereby made for a description of said 2.5 acres of land.

EXHIBIT "D" TO
LETTER AGREEMENT
BETWEEN
NATIONAL OIL RECOVERY CORPORATION AND
LAZARUS ENERGY HOLDINGS, LLC AND
LAZARUS TEXAS REFINERY I, LLC

Permitted Encumbrances
Tracts 1, 2 & 3

1. Rights of mineral estate owners and to the rights of those that hold under them;

2. Easement, dated April 19, 1978, from Uni Oil, Inc. to Central Power and Light Company, recorded in Volume 886, Page 89, Deed Records, San Patricio County, Texas;

3. Road rights-of-way as shown on the Burton & Danforth Subdivision Map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas;

4. Easement, dated February 8, 1979, from Uni Oil Co. to Central Power and Light Company, recorded in Volume 807, Page 299, Deed Records, San Patricio County, Texas;

5. Agreement, dated February 2, 1965, from Brashear-Irwin Industries, Inc. to T.L. Bishop, recorded in Volume 311, Page 124, Deed Records, San Patricio County, Texas;

6. Term and conditions of reservation of fee title to one certain fresh water line along with easement relative thereto as set out in Deed, dated June 22, 1968, from Brashear Industries, Inc. to L.V. Elliott, Trustee, recorded in Volume 372, Page 161, Deed Records, San Patricio County, Texas;

7. Assignment Of Covenant to extend channel, dated October 25, 1977, from Mark P. Banjavich, et al, to T. Michael Hajecate, et al, recorded in Volume 567, Page 469, Deed Records, San Patricio County, Texas;

8. Right-of-Way, dated July 15, 1952, from Conn Brown to United Gas Pipe Line Company, recorded in Volume 176, Page 485, Deed Records, San Patricio County, Texas;

9. Right-of-Way, dated September 23, 1953, from E.D. Richmond, et al, to Sunray Mid-Continent Oil Company, recorded in Volume 297, Page 283, Deed Records, San Patricio County, Texas;

10. Right-of-Way, dated March 16, 1962, from E.D. Richmond, Jr., et al, to the State of Texas, recorded in Volume 276, Page 109, Deed Records, San Patricio County, Texas;

11. Right-of-Way, dated July 3, 1934, from R.K. Coleman to San Patricio County, recorded in Volume 105, Page 497, Deed Records, San Patricio County, Texas;

12. Oil, gas and mineral leases, reservation of mineral interests, pooling arrangements, right-of-way agreements, easements, and mineral deeds affecting the Property and of record in the office of the County Clerk of San Patricio County, Texas.

Barge Dock

Any and all restrictions, covenants, easements, oil, gas and mineral leases, oil, gas and mineral deeds, oil, gas and mineral reservations, rights-of-way, if any, pertaining to the Barge Dock, but only to the extent any of the foregoing are shown of record in the office of the County Clerk of San Patricio County and are still in effect with respect to the Barge Dock, and to all zoning laws, regulations and ordinances of municipal and/or governmental authorities, if any, but only to the extent they are still in effect and relate to the Barge Dock.

Attachment No. 3

09/19/2012

CERTIFIED MAIL NO. 7008 0500 0001 2134 2047

RETURN RECEIPT REQUESTED

PAYER: Richard F. Bergner
Registered Agent for National Oil Recovery Corp
5151 San Felipe, Suite 1950
Houston, TX 77056-3907

Notice of Non-Compliance

RE: Administrative Order on Consent for Remedial Investigation and Feasibility Study, Replenishment of Special Account #2, Falcon Refinery Superfund Site 06MC

With this letter, EPA is notifying you of your client's noncompliance with the above-referenced Order for failure to pay EPA's costs demanded by EPA's bill dated March 09, 2012.

Bill Number:	2761026S056
Billing Date:	03/09/2012
Payment Due:	03/29/2012

Original Debt:	$	208,205.84
Interest Charges:	$	830.28
Less Payment*:	$	0.00
Amount now due:	$	209,036.12

Payment is due immediately. If the payment amount identified in this letter is not paid within thirty(30) days after the date of this notice, this debt may be referred to Department of Justice for enforcement and collection. No additional EPA notice will be sent. The referral will seek payment of the amount due as provided in the Order plus accrued interest, penalties, and enforcement costs, including attorney's fees, as appropriate.

If you have any questions or wish to discuss this matter, or need to make further arrangements, please contact Doretha Christian at 214-665-6734. Please note, unless otherwise advised in writing by EPA, any communications with EPA will not relieve you of your obligation to make the required timely payment as provided in this letter. Please make the check payable to "EPA Hazardous Substance Superfund".

Please Remit to:
U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

Sincerely,

DANA SHERRER
Accountant

CC:
Doretha Christian

Attachment No. 4

14 PGS 615663
DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF SAN PATRICIO §

THAT National Oil Recovery Corporation, a Delaware corporation authorized to transact business in the State of Texas (herein called "Grantor"), for and in consideration of Ten And No/100 Dollars ($10.00) and other good and valuable consideration in hand by Lazarus Texas Refinery I, LLC, a Delaware limited liability company authorized to transact business in the State of Texas (herein called "Grantee"), whose mailing address is 801 Travis, Suite 2100, Houston, Texas 77002, the receipt and sufficiency of which is hereby acknowledged and confessed, and in further consideration of the execution and delivery by Grantee of that certain Installment Real Estate Lien Note of even date herewith, in the original principal sum provided in said Installment Real Estate Lien Note, bearing interest at the rate stipulated therein, payable to the order of Grantor, as therein provided, the payment of which Installment Promissory Note is secured by the vendor's lien and superior title hereinafter reserved and retained, and is additionally secured by liens and security interests created and provided for in the certain Deed Of Trust And Security Agreement of even date herewith from Grantee to Richard F. Bergner, Trustee, conveying unto said Trustee the hereinafter described property, by these presents does hereby GRANT, SELL, and CONVEY unto Grantee, subject to the assumption of liabilities, exceptions and reservations herein contained, the following described property located in San Patricio County, Texas, together with all improvements and fixtures situated on, attached or located on said property, to wit:

Refinery Land

The surface only of the certain 87.258 acres of land, more or less, situated in San Patricio County, Texas, and described by metes and bounds in Exhibit "A," attached hereto and made a part hereof for all purposes (the "Refinery Land"), together with all improvements located thereon, including, but not limited to, eight (8) storage tanks with a total capacity of 685,000 barrels of storage, and all and singular the rights and appurtenances pertaining to the Refinery Land, including, but not limited to, all of Grantor's rights, titles and interests, if any, in and to all adjacent easements, streets, alleys, rights-of-way, rights of ingress and egress, strips and gores.

Refinery Equipment

In addition to the improvements located on the Refinery Land, all of the personal property, fixtures and/or equipment described in Exhibit "B," attached hereto and made a part hereof for all purposes (the Refinery Equipment")

Barge Dock

The surface only of the certain 14.24 acres of land, more or less, situated in San Patricio County, Texas, and described by metes and bounds in the Exhibit "C," attached hereto and made a part hereof for all purposes (the "Barge Dock"), together with all improvements located thereon, and all and singular the rights and appurtenances pertaining to the Barge Dock.

Pipeline And Equipment

All pipes, pipelines, valves, metering equipment, pumps, if any, in, on, under or through (i) the Refinery Land, (ii) the Refinery Equipment, and (iii) the Barge Dock (the "Pipelines And Equipment").

The foregoing described Refinery Land, Refinery Equipment, Barge Dock, and Pipeline And Equipment are herein collectively called the "Property."

Assumption Of Obligations

Grantee acknowledges that the Property is also known as the "Falcon Refinery" and has been designated by the Environmental Protection Agency ("EPA") as a Superfund Site, and is subject to remediation and clean-up in connection with two (2) Administrative Orders On Consent with the EPA relative to the Property, they being (a) Administrative Order On Consent For Removal Action, U.S. EPA Region 6, CERCLA Docket No. 06-04-04, dated June 9, 2004, and (b) Administrative Order On Consent For Remedial Investigation And Feasibility Study, U.S. EPA Region 6, CERCLA Docket No. 06-05-04, dated

June 9, 2004 (collectively, referred to herein as the "AOC's"), as well as an Agreed Order for resumption of Removal Work, dated May 2, 2011 and an Agreed Order for resumption of Remedial Investigation and Feasibility Study, dated September 26, 2011 (collectively, the "Agreed Orders"). In addition, Grantee acknowledges it is aware that Grantor has received from the EPA a Notice Of Deficiencies, dated October 26, 2011, relative to the RI/FS Agreed Order and since then the EPA has taken over the work contemplated by the RI/FS Agreed Order and related AOC's.

As part of the consideration for the conveyance of the Property to Grantee, Grantee expressly agrees to assume and be solely responsible for the performance of all of Grantor's remaining obligations in, to and under the AOC's and the Agreed Orders, with the same legal force and effect as if Grantee were the original signatory to the AOC's and the Agreed Orders.

AS IS And WHERE IS

GRANTOR HAS EXECUTED AND DELIVERED THIS DEED AND HAS GRANTED, BARGAINED, SOLD AND CONVEYED THE PROPERTY, AND GRANTEE HAS ACCEPTED THIS DEED AND HAS PURCHASED THE PROPERTY, AS IS, WHERE IS, AND WITH ALL FAULTS, IF ANY, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO (A) THE CONDITION OF THE PROPERTY OR ANY ELEMENT THEREOF, INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL DESIGN OR ENGINEERING OF THE

IMPROVEMENTS; (C) THE QUALITY OF THE LABOR AND MATERIALS INCLUDED IN THE IMPROVEMENTS, (D) THE SOIL CONDITIONS, DRAINAGE OR OTHER CONDITIONS EXISTING AT THE PROPERTY WITH RESPECT TO ANY PARTICULAR PURPOSE OR BY ANY DESCRIPTION OF THE PROPERTY; (E) ALL WARRANTIES CREATED BY AN AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY; (F) THE PRESENCE ON THE PROPERTY OR RELEASED FROM THE PROPERTY OR SURROUNDING AREAS, OF ANY HAZARDOUS SUBSTANCES, SOLID TOXIC CHEMICALS OR OTHER MATERIALS; AND (G) ALL OTHER WARRANTIES AND REPRESENTATIONS WHATSOEVER, EXCEPT THE WARRANTY OF TITLE EXPRESSLY SET FORTH HEREIN.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns forever; and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND, all and singular, the Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor only, but not otherwise.

This conveyance, including the above warranty is, however, made subject to the AOC's, the Agreed Orders and the Permitted Encumbrances described in Exhibit "D," attached hereto and made a part hereof, but only to the extent that any of the foregoing are shown of record in the office of the County Clerk of San Patricio County, Texas and are still in effect with respect to the Property, as well as that certain Lease Agreement, dated January 16, 2006, by and between Grantor and Superior Crude Gathering, Inc. and all amendments and supplements thereto.

It is expressly agreed that a vendor's lien, as well as superior title in and to the Property, is reserved and retained against the Property until the above described Installment Real Estate Lien Note is fully paid according to the face, tenor, effect and reading thereof when this Deed shall become absolute.

Ad valorem taxes for the current year have been prorated to the date hereof, and Grantee assumes the payment thereof.

EXECUTED the 29th day of February, 2012.

GRANTOR:

NATIONAL OIL RECOVERY CORPORATION

By: _____, Assistant Secretary

GRANTEE:

LAZARUS TEXAS REFINERY I, LLC

By: _____
Jonathan Carroll, Director

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 29th day of February, 2012, by Richard D. Bergna on behalf of National Oil Recovery Corporation and in the capacity stated.

_____
Notary Public In And For
The State Of TEXAS

SUSAN JANE HAYWOOD
Notary Public,
State of Texas
Commission Expires 07-25-13

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 29th day of February, 2012, by Jonathan Carroll, a Director of Lazarus Texas Refinery I, LLC, a Delaware limited liability company authorized to transact business in the State of Texas, on behalf of said limited liability company and in the capacity therein stated.

SUSAN JANE HAYWOOD
Notary Public,
State of Texas
Commission Expires 07-26-13

Susan Jane Haywood
Notary Public In And For
The State Of TEXAS

EXHIBIT "A" TO
SPECIAL WARRANTY DEED WITH VENDOR'S LIEN
FROM
NATIONAL OIL RECOVERY CORPORATION ("GRANTOR")
TO
LAZARUS TEXAS REFINERY I, LLC ("GRANTEE")

Tract 1

FIELDNOTE DESCRIPTION of a portion of Lots 4 and 5, Block O, Burton and Danforth Subdivision, as shown by map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas, described as follows:

COMMENCING at the southeasterly corner of said Lot 4, being at the intersection of the centerline of Farm-to-Market Road 2725 with the centerline of a 40.00 foot public roadway between Blocks N and O of said subdivision;

THENCE, along the centerline of said 40.00 foot roadway and the southerly boundary of said Lot 4, N. 55° 23' 00" W, at 50.00 feet past the westerly right-of-way of said Farm-to-Market Road, in all 156.12 feet to the POINT OF BEGINNING of this tract;

THENCE, continuing along said centerline and boundary, N 55° 23' 00" W, 503.88 feet to the southwesterly corner of said Lot 5;

THENCE, along the westerly boundary of said Lot 5, N 34° 37' 00" E, at 20.00 feet past a 5/8 inch iron rod found on the northerly right-of-way of said 40.00 foot roadway, in all 685.00 feet to a brass monument in concrete found;
THENCE, S 55° 23' 00" E, 610.00 feet to a 5/8 inch iron rod set on the westerly right-of-way of said Farm-to-Market Road;

THENCE, along said westerly right-of-way, S 34° 37' 00" W, 501.25 feet to a 5/8 inch iron rod found;

THENCE, N 55° 23' 00" W, 106.12 feet to a 5/8 inch iron rod found;

THENCE, S 34° 37' 00" W, at 163.75 feet past a 5/8 inch iron rod found on the northerly right-of-way of said 40.00 foot roadway, in all 183.75 feet to the POINT OF BEGINNING.

CONTAINING 9.145 acres, more or less, of which 0.231 acre is in road right-of-way.

Tract 2

FIELD NOTE DESCRIPTION in all of Lots 1 and 2, and a portion of Lot 3, Block N, and a portion of Lots 1 and 2, Block M, and all of Lot 4, Block II, and a portion of Lot 4, Block JJ, Burton and Danforth Subdivision, as shown by map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas, described as follows:

COMMENCING at the northwesterly corner of said Lot 3, Block N, being at the intersection of the centerline of Farm-to-Market Road 2725 with the centerline of a 40.00 foot roadway between Blocks N and O of said subdivision;

THENCE, along the centerline of said 40.00 foot roadway and the northerly boundary of said Lot 3, S 55°23' 00" E, 50.00 feet to the easterly right-of-way of said Farm-to-Market Road for the POINT OF BEGINNING of this tract;

THENCE, along said easterly right-of-way, S 34° 37' 00" W, at 20.00 feet past a 5/8 inch iron rod set on the southerly right-of-way of said 40.00 foot roadway, at 1300.00 feet past a 5/8 inch iron rod set on the northerly right-of-way of 40.00 foot roadway between Blocks M and N of said subdivision, in all 1320.00 feet to a 5/8 inch iron rod set on the southerly boundary of said Lot 3, Block N, being on the centerline of said 40.00 foot roadway;

THENCE, along said centerline and southerly boundary, S 55° 23' 00" E, 280.00 feet to a 5/8 inch iron rod set at the southeasterly corner of said Lot 3, Block N, being the northwesterly corner of Lot 2, Block M;

THENCE along the westerly boundary of said Lot 2, S 34° 37' 00" W, at 20.00 feet past the southerly right-of-way of said 40.00 foot roadway, in all 660.00 feet to a 5/8 inch iron rod set;

THENCE, S 55° 23' 00" E, at 630.00 feet past the westerly right-of-way of a 60.00 foot roadway between Blocks M and JJ, at 660.00 feet past the centerline of said roadway and boundary between said Blocks M and JJ, in all 690.00 feet to a 5/8 inch iron rod found on the easterly right-of-way of said 60.00 foot roadway;

THENCE, along said easterly right-of-way, N 34° 37' 00" E, 420.89 feet to a 5/8 inch iron rod found;

THENCE, S 57° 11' 36" E, 219.92 feet to a 5/8 inch iron rod found;

THENCE, N 36° 16' 05" E, 252.27 feet to a 5/8 inch iron rod found on the northerly right-of-way of a 40.00 foot roadway between Blocks JJ and II;

THENCE, along said northerly right-of-way, S 55° 23' 00" E, 72.92 feet to a 5/8 inch iron rod set on the boundary between Lots 3 and 4, Block II;

THENCE, along said boundary, N 34° 37' 00" E, at 1280.00 feet pass a 5/8 inch iron rod set on the southerly right-of-way of a 40.00 foot roadway between Blocks II and HH, in all 1300.00 feet to the centerline of said roadway, being the northeasterly corner of said Lot 3, Block II;

THENCE, along said centerline and the boundary between Blocks II and HH, and the boundary between Blocks N and O, N 55° 23' 00" W, 1270.00 feet to the POINT OF BEGINNING.

CONTAINING 50.113 acres, more or less, of which 4.070 acres is in road right-of-way.

Tract 3

Lots 1, 2, and 3, Block II, Burton and Danforth Subdivision, as shown by map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas.

EXHIBIT "B" TO
SPECIAL WARRANTY DEED WITH VENDOR'S LIEN
FROM
NATIONAL OIL RECOVERY CORPORATION ("GRANTOR")
TO
LAZARUS TEXAS REFINERY I, LLC ("GRANTEE")

1. A 10,000 or 12,000 b/d atmospheric crude distillation unit
2. A 30,000 b/d atmospheric crude distillation unit
3. A 20,000 b/d vacuum distillation unit
4. A 15,000 b/d naphtha stabilizer
5. Tankage consisting of 8 storage tanks, with an eventual total capacity of approximately 685,000 barrels of storage

EXHIBIT "C" TO
SPECIAL WARRANTY DEED WITH VENDOR'S LIEN
FROM
NATIONAL OIL RECOVERY CORPORATION ("GRANTOR")
TO
LAZARUS TEXAS REFINERY I, LLC ("GRANTEE")

FIELDNOTES for a 14.24 acre tract of land being all of Lot 1, Bay Block B, the West 509.29 feet of Lot 2, Bay Block 8, the South 130 feet of Lot 4, Bay Block 7, a portion of Ocean Drive and a tract of land between the East boundary of Ocean Drive and Redfish Bay, all as shown on the Burton & Danforth Subdivision map as recorded in Volume 1, Page 3, Plat Records of Aransas County, Texas and a certified copy of such map is recorded in Volume 152, Page 1 of the San Patricio County, Texas Deed Records;

BEGINNING at a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the West corner of said Lot 2 on the Southeast right-of-way line of Bay Avenue (60 foot wide right-of-way with variable width caliche surface) for the West corner of this survey;

THENCE North 34° 37' 00" East, along said Southeast right-of-way line, at 330.00 feet pass a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the North corner of said Lot 2 and the West corner of said Lot 1, in all a distance of 640.00 feet to a 1/2 inch iron rod found (marked R.P.L.S. 1523) on the Southwest right-of-way line of Sun Ray Road (40 foot wide right-of-way with 22 foot wide asphalt surface) for the North corner of said Lot 1 and a corner of this survey;

THENCE South 55° 30' 35" East along said Southwest right-of-way line at 901.00 feet a 1/2 inch iron rod found (marked R.P L.S. 1523) bears South 34° 29' 25" West 2.0 feet, in all a distance of 913.24 feet to the West right-of-way line of Ocean Drive for the East corner of said Lot 1 and inside corner of this survey;

THENCE North 16° 32 55" East, along the West right-of-way line of Ocean Drive (80 foot wide right-of-way unimproved) 42.04 feet across Sun Ray Road to a 5/8 inch iron rod found at the South corner of Lot 4, Block 7 for an inside corner of this survey;

THENCE North 55° 30' 35" West along the Northeast right-of-way line of Sun Ray Road, at 13.46 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.0 feet in all a distance of 900.19 feet to a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the West corner of said Lot 4 on the Southeast right-of-way line of Bay Avenue, for a corner of this survey;

THENCE North 34° 37' 00" East along said Southeast right-of-way line 130.00 feet to a 3/4 inch iron rod with flattened top found for the North corner of this survey;

THENCE South 55° 30' 35" East, parallel to the Northeast right-of-way line of Sun Ray Road and 130 feet distant therefrom measured at right angles thereto, at 840.41 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West, 1.85 feet at 857.83 feet cross the West right-of-way line of Ocean Drive, at 861.02 feet pass a 5/8 inch iron rod in concrete found, at 941.92 feet cross the East right-of-way line of Ocean Drive in all a distance of 1,038.69 feet to the shoreline of Red Fish Bay;

THENCE along the shoreline of Red Fish Bay, South 20° 50' 26" West at 1.81 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears North 69° 09' 34" West 2.24 feet, in all a distance of 89.75 feet to an angle point in said shoreline;

THENCE continuing along said shoreline South 00° 40' 20" West 80.69 feet and thence South 13° 50' 36" East 48.81 feet to the beginning of a concrete bulkhead;

THENCE along the outside face of said concrete bulkhead as follows:
South 73° 37' 00" East 15.96 feet;
South 20° 16' 30" West 29.72 feet;
North 71° 29' 02" West 48.32 feet;
South 18° 17' 15" West 78.59 feet;
South 71° 03' 51" East 53.00 feet and South 18° 42' 11" West 193.54 feet to the end of said concrete bulkhead;

THENCE continuing with the shoreline of Red Fish Bay as follows:
South 40° 43' 53" West 74.95 feet;
South 50° 50' 46" West 42.44 feet;
South 11° 18' 15" West 141.77 feet and South 24° 58' 51" West 93.85 feet to a point on the Southeasterly extension of the common boundary of Lots 2 and 3 Bay Block 8 for the South corner of this survey;

THENCE with a wire fence along said Southeasterly extension, North 55° 30' 35" West at 82.04 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.69 in all a distance of 132.15 feet to the centerline of Ocean Drive for a corner of this survey, from which corner a 2 inch iron pipe found on the West right-of-way line of Ocean Drive bears North 55° 30' 35" West 42.04 feet and thence South 16° 32' 55" West 1.47 feet;

THENCE with the centerline of Ocean Drive North 16° 32' 55" East, 346.87 feet to a point on the Southeasterly extension of the common boundary of Lots 1 and 2, Bay Block 8, for an inside corner of this survey;

THENCE along last mentioned Southeasterly extension North 55° 30' 35" West 42.04 feet to the South corner of said Lot 1 and the East corner of said Lot 2, on the West right-of-way line of Ocean Drive;

THENCE North 55° 30' 35" West along the common boundary of said Lots 1 and 2 at 2.64 feet, a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.77 feet in all a distance of 505.01 feet for an inside corner of this survey;

THENCE South 34° 37' 00" West at 1.12 feet pass a 1/2 inch iron rod found (marked R.P.L.S. 1523) in all a distance of 330.0 feet to a wire fence on the common boundary of said Lots 2 and 3, Bay Block 8 for a corner of this survey, from which corner a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 37' 00" West 1.12 feet;

THENCE North 55° 30' 35" West with said wire fence on the common boundary of said Lots 2 and 3,509.29 feet to the POINT OF BEGINNING, save and except 2.5 acres conveyed from National Oil Recovery Corporation to Pi Energy Corporation, by Special Warranty Deed, dated August 17, 1998, to which Special Warranty Deed reference is hereby made for a description of said 2.5 acres of land.

Exhibit "C"
Page 2 Of 2

EXHIBIT "D" TO
SPECIAL WARRANTY DEED WITH VENDOR'S LIEN
FROM
NATIONAL OIL RECOVERY CORPORATION ("GRANTOR")
TO
LAZARUS TEXAS REFINERY I, LLC ("GRANTEE")

Permitted Encumbrances
Tracts 1, 2 & 3

1. Rights of mineral estate owners and to the rights of those that hold under them;

2. Easement, dated April 19, 1978, from Uni Oil, Inc. to Central Power and Light Company, recorded in Volume 886, Page 89, Deed Records, San Patricio County, Texas;

3. Road rights-of-way as shown on the Burton & Danforth Subdivision Map recorded in Volume 152, Page 1, Deed Records, San Patricio County, Texas;

4. Easement, dated February 8, 1979, from Uni Oil Co. to Central Power and Light Company, recorded in Volume 807, Page 299, Deed Records, San Patricio County, Texas;

5. Agreement, dated February 2, 1965, from Brashear-Irwin Industries, Inc. to T.L. Bishop, recorded in Volume 311, Page 124, Deed Records, San Patricio County, Texas;

6. Term and conditions of reservation of fee title to one certain fresh water line along with easement relative thereto as set out in Deed, dated June 22, 1968, from Brashear Industries, Inc. to L.V. Elliott, Trustee, recorded in Volume 372, Page 161, Deed Records, San Patricio County, Texas;

7. Assignment Of Covenant to extend channel, dated October 25, 1977, from Mark P. Banjavich, et al, to T. Michael Hajeente, et al, recorded in Volume 567, Page 469, Deed Records, San Patricio County, Texas;

8. Right-of-Way, dated July 15, 1952, from Conn Brown to United Gas Pipe Line Company, recorded in Volume 176, Page 485, Deed Records, San Patricio County, Texas;

9. Right-of-Way, dated September 23, 1953, from E.D. Richmond, et al, to Sunray Mid-Continent Oil Company, recorded in Volume 297, Page 283, Deed Records, San Patricio County, Texas;

10. Right-of-Way, dated March 16, 1962, from E.D. Richmond, Jr., et al, to the State of Texas, recorded in Volume 276, Page 109, Deed Records, San Patricio County, Texas;

11. Right-of-Way, dated July 3, 1934, from R.K. Coleman to San Patricio County, recorded in Volume 105, Page 497, Deed Records, San Patricio County, Texas;

12. Oil, gas and mineral leases, reservation of mineral interests, pooling arrangements, right-of-way agreements, easements, and mineral deeds affecting the Property and of record in the office of the County Clerk of San Patricio County, Texas.

Barge Dock

Any and all restrictions, covenants, easements, oil, gas and mineral leases, oil, gas and mineral deeds, oil, gas and mineral reservations, rights-of-way, if any, pertaining to the Barge Dock, but only to the extent any of the foregoing are shown of record in the office of the County Clerk of San Patricio County and are still in effect with respect to the Barge Dock, and to all zoning laws, regulations and ordinances of municipal and/or governmental authorities, if any, but only to the extent they are still in effect and relate to the Barge Dock.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Gracie Alaniz-Gonzales

Gracie Alaniz-Gonzales, County Clerk
San Patricio Texas
March 02, 2012 10:19:00 AM
FEE: $68.00 615663
DEED

Exhibit "D"
Page 2 Of 2

Attachment No. 5

5 PGS 615662
DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED AND BILL OF SALE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF SAN PATRICIO §

THAT Norcorom Industries SRL, registration number J40/28770/1994 (herein called "Grantor"), for and in consideration of Ten And No/100 Dollars ($10.00) and other good and valuable consideration in hand paid by Lazarus Texas Refinery I, LLC, a Delaware limited liability company authorized to transact business in the State of Texas (herein called "Grantee"), whose mailing address is 801 Travis, Suite 2100, Houston, Texas 77002, the receipt and sufficient of which is hereby acknowledged and confessed, by these presents does hereby GRANT, SELL, and CONVEY unto Grantee the following described property located in San Patricio County, Texas, together with all improvements and fixtures situated on, attached or located on said property, to wit:

Barge Dock

The surface only of the certain 14.24 acres of land, more or less, situated in San Patricio County, Texas, and described by metes and bounds in the Exhibit "A," attached hereto and made a part hereof for all purposes (the "Barge Dock"), together with all improvements located thereon, and all and singular the rights and appurtenances pertaining to the Barge Dock.

AS IS And WHERE IS

Grantee, also by the recording of this Special Warranty Deed And Bill Of Sale, further acknowledges and agrees that the Property is USED, and that Grantee takes the same "AS IS," "WHERE IS," and "WITH ALL FAULTS."

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns forever; and Grantor does hereby bind

itself, its successors and assigns, to WARRANT AND FOREVER DEFEND, all and singular, the Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantee, but not otherwise.

Ad valorem taxes for the current year have been prorated to the date hereof, and Grantee assumes the payment thereof.

EXECUTED the 29 day of February, 2012.

GRANTOR:

NORCOROM INDUSTRIES SRL

By: _____
Nelu-Marius Velicescu,
President, Sole Shareholder and Director

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 29th day of February, 2012, by Nelu Marius Velicescu, President, Sole Shareholder and Director of Norcorom Industries SRL, a Romanian corporation, on behalf of said corporation and in the capacity therein stated.

SUSAN JANE HAWWOOD
Notary Public,
State of Texas
Commission Expires 07-25-13

_____
Notary Public In And For
The State Of TEXAS

After Recording Please Return To:
Jonathan Carroll
801 Travis, Suite 2100
Houston, Texas 77002

EXHIBIT "A" TO
SPECIAL WARRANTY DEED AND BILL OF SALE
BETWEEN
NORCOROM INDUSTRIES, SR.L ("GRANTOR")
AND
LAZARUS TEXAS REFINERY I, LLC ("GRANTEE")

FIELDNOTES for a 14.24 acre tract of land being all of Lot 1, Bay Block B, the West 509.29 feet of Lot 2, Bay Block 8, the South 130 feet of Lot 4, Bay Block 7, a portion of Ocean Drive and a tract of land between the East boundary of Ocean Drive and Redfish Bay, all as shown on the Burton & Danforth Subdivision map as recorded in Volume 1, Page 3, Plat Records of Aransas County, Texas and a certified copy of such map is recorded in Volume 152, Page 1 of the San Patricio County, Texas Deed Records;

BEGINNING at a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the West corner of said Lot 2 on the Southeast right-of-way line of Bay Avenue (60 foot wide right-of-way with variable width caliche surface) for the West corner of this survey;

THENCE North 34° 37' 00" East, along said Southeast right-of-way line, at 330.00 feet pass a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the North corner of said Lot 2 and the West corner of said Lot 1, in all a distance of 640.00 feet to a 1/2 inch iron rod found (marked R.P.L.S. 1523) on the Southwest right-of-way line of Sun Ray Road (40 foot wide right-of-way with 22 foot wide asphalt surface) for the North corner of said Lot 1 and a corner of this survey;

THENCE South 55° 30' 35" East along said Southwest right-of-way line at 901.00 feet a 1/2 inch iron rod found (marked R.P L.S. 1523) bears South 34° 29' 25" West 2.0 feet, in all a distance of 913.24 feet to the West right-of-way line of Ocean Drive for the East corner of said Lot 1 and inside corner of this survey;

THENCE North 16° 32' 55" East, along the West right-of-way line of Ocean Drive (80 foot wide right-of-way unimproved) 42.04 feet across Sun Ray Road to a 5/8 inch iron rod found at the South corner of Lot 4, Block 7 for an inside corner of this survey;

THENCE North 55° 30' 35" West along the Northeast right-of-way line of Sun Ray Road, at 13.46 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.0 feet in all a distance of 900.19 feet to a 1/2 inch iron rod found (marked R.P.L.S. 1523) at the West corner of said Lot 4 on the Southeast right-of-way line of Bay Avenue, for a corner of this survey;

THENCE North 34° 37' 00" East along said Southeast right-of-way line 130.00 feet to a 3/4 inch iron rod with flattened top found for the North corner of this survey;

THENCE South 55° 30' 35" East, parallel to the Northeast right-of-way line of Sun Ray Road and 130 feet distant therefrom measured at right angles thereto, at 840.41 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West, 1.85 feet at 857.83 feet cross the West right-of-way line of Ocean Drive, at 861.02 feet pass a 5/8 inch iron rod in concrete found, at 941.92 feet cross the East right-of-way line of Ocean Drive in all a distance of 1,038.69 feet to the shoreline of Red Fish Bay;

THENCE along the shoreline of Red Fish Bay, South 20° 50' 26" West at 1.81 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears North 69° 09' 34" West 2.24 feet, in all a distance of 89.75 feet to an angle point in said shoreline;

THENCE continuing along said shoreline South 00° 40' 20" West 80.69 feet and thence South 13° 50' 36" East 48.81 feet to the beginning of a concrete bulkhead;

THENCE along the outside face of said concrete bulkhead as follows:
South 73° 37' 00" East 15.96 feet;
South 20° 16' 30" West 29.72 feet;
North 71° 29' 02" West 48.32 feet;
South 18° 17' 15" West 78.59 feet;
South 71° 03' 51" East 53.00 feet and South 18° 42' 11" West 193.54 feet to the end of said concrete bulkhead;

THENCE continuing with the shoreline of Red Fish Bay as follows:
South 40° 43' 53" West 74.95 feet;
South 50° 50' 46" West 42.44 feet;
South 11° 18' 15" West 141.77 feet and South 24° 58' 51" West 93.85 feet to a point on the Southeasterly extension of the common boundary of Lots 2 and 3 Bay Block 8 for the South corner of this survey;

THENCE with a wire fence along said Southeasterly extension, North 55° 30' 35" West at 82.04 feet a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.69 in all a distance of 132.15 feet to the centerline of Ocean Drive for a corner of this survey, from which corner a 2 inch iron pipe found on the West right-of-way line of Ocean Drive bears North 55° 30' 35" West 42.04 feet and thence South 16° 32' 55" West 1.47 feet;

THENCE with the centerline of Ocean Drive North 16° 32' 55" East, 346.87 feet to a point on the Southeasterly extension of the common boundary of Lots 1 and 2, Bay Block 8, for an inside corner of this survey;

THENCE along last mentioned Southeasterly extension North 55° 30' 35" West 42.04 feet to the South corner of said Lot 1 and the East corner of said Lot 2, on the West right-of-way line of Ocean Drive;

THENCE North 55° 30' 35" West along the common boundary of said Lots 1 and 2 at 2.64 feet, a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 29' 25" West 2.77 feet in all a distance of 505.01 feet for an inside corner of this survey;

THENCE South 34° 37' 00" West at 1.12 feet pass a 1/2 inch iron rod found (marked R.P.L.S. 1523) in all a distance of 330.0 feet to a wire fence on the common boundary of said Lots 2 and 3, Bay Block 8 for a corner of this survey, from which corner a 1/2 inch iron rod found (marked R.P.L.S. 1523) bears South 34° 37' 00" West 1.12 feet;

THENCE North 55° 30' 35" West with said wire fence on the common boundary of said Lots 2 and 3,509.29 feet to the POINT OF BEGINNING, save and except 2.5 acres conveyed from National Oil Recovery Corporation to Pi Energy Corporation, by Special Warranty Deed, dated August 17, 1998, to which Special Warranty Deed reference is hereby made for a description of said 2.5 acres of land.

Exhibit "A"
Page 2 Of 2

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Gracie Alaniz-Gonzales

Gracie Alaniz-Gonzales, County Clerk
San Patricio Texas
March 02, 2012 10:19:00 AM
FEE: $20.00 615662
DEED

Attachment No. 6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 6 2003

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements")

FROM: Susan E. Bromm, Director
Office of Site Remediation Enforcement

TO: Director, Office of Site Remediation and Restoration, Region I
Director, Emergency and Remedial Response Division, Region II
Director, Hazardous Site Cleanup Division, Region III
Director, Waste Management Division, Region IV
Directors, Superfund Division, Regions V, VI, VII and IX
Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, Region VIII
Director, Office of Environmental Cleanup, Region X
Director, Office of Environmental Stewardship, Region I
Director, Environmental Accountability Division, Region IV
Regional Counsel, Regions II, III, V, VI, VII, IX, and X
Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, Region VIII

I. Introduction

The Small Business Liability Relief and Brownfields Revitalization Act, ("Brownfields Amendments"), Pub. L. No. 107-118, enacted in January 2002, amended the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), to provide important liability limitations for landowners that qualify as: (1) bona fide prospective purchasers, (2) contiguous property owners, or (3) innocent landowners (hereinafter, "landowner liability protections" or "landowner provisions").

To meet the statutory criteria for a landowner liability protection, a landowner must meet certain threshold criteria and satisfy certain continuing obligations.[1] Many of the conditions are the same or similar under the three landowner provisions ("common elements"). This memorandum is intended to provide Environmental Protection Agency personnel with some general guidance on the common elements of the landowner liability protections. Specifically, this memorandum first discusses the threshold criteria of performing "all appropriate inquiry" and demonstrating no "affiliation" with a liable party. The memorandum then discusses the continuing obligations:

- compliance with land use restrictions and not impeding the effectiveness or integrity of institutional controls;
- taking "reasonable steps" with respect to hazardous substances affecting a landowner's property;
- providing cooperation, assistance and access;
- complying with information requests and administrative subpoenas; and
- providing legally required notices.

A chart summarizing the common elements applicable to bona fide prospective purchasers, contiguous property owners, and innocent landowners is attached to this memorandum (Attachment A). In addition, two documents relating to reasonable steps are attached to this memorandum: (1) a "Questions and Answers" document (Attachment B); and (2) a sample site-specific Comfort/Status Letter (Attachment C).

This memorandum addresses only some of the criteria a landowner must meet in order to qualify under the statute as a bona fide prospective purchaser, contiguous property owner, or innocent landowner (i.e., the common elements described above). Other criteria (e.g., the criterion that a contiguous property owner "did not cause, contribute, or consent to the release or threatened release," found in CERCLA § 107(q)(1)(A)(i), and the criterion that a bona fide prospective purchaser and innocent landowner purchase the property after all disposal of hazardous substances at the facility, found in CERCLA §§ 101(40)(A), 101(35)(A)), are not addressed in this memorandum. In addition, this guidance does not address obligations landowners may have under state statutory or common law.

This memorandum is an interim guidance issued in the exercise of EPA's enforcement discretion. As EPA gains more experience implementing the Brownfields Amendments, the Agency may revise this guidance. EPA welcomes comments on this guidance and its implementation. Comments may be submitted to the contacts identified at the end of this memorandum.

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[1] See CERCLA §§ 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).

II. Background

The bona fide prospective purchaser provision, CERCLA § 107(r), provides a new landowner liability protection and limits EPA's recourse for unrecovered response costs to a lien on property for the increase in fair market value attributable to EPA's response action. To qualify as a bona fide prospective purchaser, a person must meet the criteria set forth in CERCLA § 101(40), many of which are discussed in this memorandum. A purchaser of property must buy the property after January 11, 2002 (the date of enactment of the Brownfields Amendments), in order to qualify as a bona fide prospective purchaser. These parties may purchase property with knowledge of contamination after performing all appropriate inquiry, and still qualify for the landowner liability protection, provided they meet the other criteria set forth in CERCLA § 101(40).[2]

The new contiguous property owner provision, CERCLA § 107(q), excludes from the definition of "owner" or "operator" a person who owns property that is "contiguous" or otherwise similarly situated to, a facility that is the only source of contamination found on his property. To qualify as a contiguous property owner, a landowner must meet the criteria set forth in CERCLA § 107(q)(1)(A), many of which are common elements. This landowner provision "protects parties that are essentially victims of pollution incidents caused by their neighbor's actions." S. Rep. No. 107-2, at 10 (2001). Contiguous property owners must perform all appropriate inquiry prior to purchasing property. Persons who know, or have reason to know, prior to purchase, that the property is or could be contaminated, cannot qualify for the contiguous property owner liability protection.[3]

The Brownfields Amendments also clarified the CERCLA § 107(b)(3) innocent landowner affirmative defense. To qualify as an innocent landowner, a person must meet the criteria set forth in section 107(b)(3) and section 101(35). Many of the criteria in section 101(35) are common elements. CERCLA § 101(35)(A) distinguishes between three types of innocent landowners. Section 101(35)(A)(i) recognizes purchasers who acquire property without knowledge of the contamination. Section 101(35)(A)(ii) discusses governments acquiring contaminated property by escheat, other involuntary transfers or acquisitions, or the exercise of eminent domain authority by purchase or condemnation. Section 101(35)(A)(iii) covers inheritors of contaminated property. For purposes of this guidance, the term "innocent landowner" refers only to the unknowing purchasers as defined in section 101(35)(A)(i). Like

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[2] For a discussion of when EPA will consider providing a prospective purchaser with a covenant not to sue in light of the Brownfields Amendments, see "Bona Fide Prospective Purchasers and the New Amendments to CERCLA," B. Breen (May 31, 2001).

[3] CERCLA § 107(q)(1)(C) provides that a person who does not qualify as a contiguous property owner because he had, or had reason to have, knowledge that the property was or could be contaminated when he bought the property, may still qualify for a landowner liability protection as a bona fide prospective purchaser, as long as he meets the criteria set forth in CERCLA § 101(40).

contiguous property owners, persons desiring to qualify as innocent landowners must perform all appropriate inquiry prior to purchase and cannot know, or have reason to know, of contamination in order to have a viable defense as an innocent landowner.

III. Discussion

A party claiming to be a bona fide prospective purchaser, contiguous property owner, or section 101(35)(A)(i) innocent landowner bears the burden of proving that it meets the conditions of the applicable landowner liability protection.[4] Ultimately, courts will determine whether landowners in specific cases have met the conditions of the landowner liability protections and may provide interpretations of the statutory conditions. EPA offers some general guidance below regarding the common elements. This guidance is intended to be used by Agency personnel in exercising enforcement discretion. Evaluating whether a party meets these conditions will require careful, fact-specific analysis.

A. Threshold Criteria

To qualify as a bona fide prospective purchaser, contiguous property owner, or innocent landowner, a person must perform "all appropriate inquiry" before acquiring the property. Bona fide prospective purchasers and contiguous property owners must, in addition, demonstrate that they are not potentially liable or "affiliated" with any other person that is potentially liable for response costs at the property.

1. *All Appropriate Inquiry*

To meet the statutory criteria of a bona fide prospective purchaser, contiguous property owner, or innocent landowner, a person must perform "all appropriate inquiry" into the previous ownership and uses of property before acquisition of the property. CERCLA §§ 101(40)(B), 107(q)(1)(A)(viii), 101(35)(A)(i),(B)(i). Purchasers of property wishing to avail themselves of a landowner liability protection cannot perform all appropriate inquiry after purchasing contaminated property. As discussed above, bona fide prospective purchasers may acquire property with knowledge of contamination, after performing all appropriate inquiry, and maintain their protection from liability. In contrast, knowledge, or reason to know, of contamination prior to purchase defeats the contiguous property owner liability protection and the innocent landowner liability protection.

The Brownfields Amendments specify the all appropriate inquiry standard to be applied. The Brownfields Amendments state that purchasers of property before May 31, 1997 shall take into account such things as commonly known information about the property, the value of the property if clean, the ability of the defendant to detect contamination, and other similar criteria. CERCLA § 101(35)(B)(iv)(I). For property purchased on or after May 31, 1997, the procedures

[4] CERCLA §§ 101(40), 107(q)(1)(B), 101(35).

of the American Society for Testing and Materials ("ASTM"), including the document known as Standard E1527 - 97, entitled "Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process," are to be used. CERCLA § 101(35)(B)(iv)(II). The Brownfields Amendments require EPA, not later than January 2004, to promulgate a regulation containing standards and practices for all appropriate inquiry and set out criteria that must be addressed in EPA's regulation. CERCLA § 101(35)(B)(ii), (iii). The all appropriate inquiry standard will thus be the subject of future EPA regulation and guidance.

2. *Affiliation*

To meet the statutory criteria of a bona fide prospective purchaser or contiguous property owner, a party must not be potentially liable or affiliated with any other person who is potentially liable for response costs.[5] Neither the bona fide prospective purchaser/contiguous property owner provisions nor the legislative history define the phrase "affiliated with," but on its face the phrase has a broad definition, covering direct and indirect familial relationships, as well as many contractual, corporate, and financial relationships. It appears that Congress intended the affiliation language to prevent a potentially responsible party from contracting away its CERCLA liability through a transaction to a family member or related corporate entity. EPA recognizes that the potential breadth of the term "affiliation" could be taken to an extreme, and in exercising its enforcement discretion, EPA intends to be guided by Congress' intent of preventing transactions structured to avoid liability.

The innocent landowner provision does not contain this "affiliation" language. In order

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[5] The bona fide prospective purchaser provision provides, in pertinent part:

> NO AFFILIATION—The person is not—(i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through— (I) any direct or indirect familial relationship; or (II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or (ii) the result of a reorganization of a business entity that was potentially liable. CERCLA § 101(40)(H).

The contiguous property owner provision provides, in pertinent part:

> NOT CONSIDERED TO BE AN OWNER OR OPERATOR— . . . (ii) the person is not— (I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or (II) the result of a reorganization of a business entity that was potentially liable[.] CERCLA § 107(q)(1)(A)(ii).

to meet the statutory criteria of the innocent landowner liability protection, however, a person must establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and the resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship. Contractual relationship is defined in section 101(35)(A).

B. Continuing Obligations

Several of the conditions a landowner must meet in order to achieve and maintain a landowner liability protection are continuing obligations. This section discusses those continuing obligations: (1) complying with land use restrictions and institutional controls; (2) taking reasonable steps with respect to hazardous substance releases; (3) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration; (4) complying with information requests and administrative subpoenas; and (5) providing legally required notices.

1. *Land Use Restrictions and Institutional Controls*

The bona fide prospective purchaser, contiguous property owner, and innocent landowner provisions all require compliance with the following ongoing obligations as a condition for maintaining a landowner liability protection:

- the person is in compliance with any land use restrictions established or relied on in connection with the response action and
- the person does not impede the effectiveness or integrity of any institutional control employed in connection with a response action.

CERCLA §§ 101(40)(F), 107(q)(1)(A)(V), 101(35)(A). Initially, there are two important points worth noting about these provisions. First, because institutional controls are often used to implement land use restrictions, failing to comply with a land use restriction may also impede the effectiveness or integrity of an institutional control, and vice versa. As explained below, however, these two provisions do set forth distinct requirements. Second, these are ongoing obligations and, therefore, EPA believes the statute requires bona fide prospective purchasers, contiguous property owners, and innocent landowners to comply with land use restrictions and to implement institutional controls even if the restrictions or institutional controls were not in place at the time the person purchased the property.

Institutional controls are administrative and legal controls that minimize the potential for human exposure to contamination and protect the integrity of remedies by limiting land or

resource use, providing information to modify behavior, or both.[6] For example, an institutional control might prohibit the drilling of a drinking water well in a contaminated aquifer or disturbing contaminated soils. EPA typically uses institutional controls whenever contamination precludes unlimited use and unrestricted exposure at the property. Institutional controls are often needed both before and after completion of the remedial action. Also, institutional controls may need to remain in place for an indefinite duration and, therefore, generally need to survive changes in property ownership (i.e., run with the land) to be legally and practically effective.

Generally, EPA places institutional controls into four categories:

(1) governmental controls (e.g., zoning);
(2) proprietary controls (e.g., covenants, easements);
(3) enforcement documents (e.g., orders, consent decrees); and
(4) informational devices (e.g., land record/deed notices).

Institutional controls often require a property owner to take steps to implement the controls, such as conveying a property interest (e.g., an easement or restrictive covenant) to another party such as a governmental entity, thus providing that party with the right to enforce a land use restriction; applying for a zoning change; or recording a notice in the land records.

Because institutional controls are tools used to limit exposure to contamination or protect a remedy by limiting land use, they are often used to implement or establish land use restrictions relied on in connection with the response action. However, the Brownfields Amendments require compliance with land use restrictions relied on in connection with the response action, even if those restrictions have not been properly implemented through the use of an enforceable institutional control. Generally, a land use restriction may be considered "relied on" when the restriction is identified as a component of the remedy. Land use restrictions relied on in connection with a response action may be documented in several places depending on the program under which the response action was conducted, including: a risk assessment; a remedy decision document; a remedy design document; a permit, order, or consent decree; under some state response programs, a statute (*e.g.*, no groundwater wells when relying on natural attenuation); or, in other documents developed in conjunction with a response action.

An institutional control may not serve the purpose of implementing a land use restriction for a variety of reasons, including: (1) the institutional control is never, or has yet to be, implemented; (2) the property owner or other persons using the property impede the effectiveness of the institutional controls in some way and the party responsible for enforcement of the institutional controls neglects to take sufficient measures to bring those persons into compliance; or (3) a court finds the controls to be unenforceable. For example, a chosen remedy might rely on an ordinance that prevents groundwater from being used as drinking water. If the local government failed to enact the ordinance, later changed the ordinance to allow for drinking

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[6] For additional information on institutional controls, see "Institutional Controls: A Site Manager's Guide to Identifying, Evaluating, and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups," September 2000, (OSWER Directive 9355.0-74FS-P).

water use, or failed to enforce the ordinance, a landowner is still required to comply with the groundwater use restriction identified as part of the remedy to maintain its landowner liability protection. Unless authorized by the regulatory agency responsible for overseeing the remedy, if the landowner fails to comply with a land use restriction relied on in connection with a response action, the owner will forfeit the liability protection and EPA may use its CERCLA authorities to order the owner to remedy the violation, or EPA may remedy the violation itself and seek cost recovery from the noncompliant landowner.

In order to meet the statutory criteria of a bona fide prospective purchaser, contiguous property owner, or innocent landowner, a party may not impede the effectiveness or integrity of any institutional control employed in connection with a response action. See CERCLA §§ 101(40)(F)(ii), 107(q)(1)(A)(v)(II), 101(35)(A)(iii). Impeding the effectiveness or integrity of an institutional control does not require a physical disturbance or disruption of the land. A landowner could jeopardize the reliability of an institutional control through actions short of violating restrictions on land use. In fact, not all institutional controls actually restrict the use of land. For example, EPA and State programs often use notices to convey information regarding contamination on site rather than actually restricting the use. To do this, EPA or a State may require a notice to be placed in the land records. If a landowner removed the notice, the removal would impede the effectiveness of the institutional control. A similar requirement is for a landowner to give notice of any institutional controls on the property to a purchaser of the property. Failure to give this notice may impede the effectiveness of the control. Another example of impeding the effectiveness of an institutional control would be if a landowner applies for a zoning change or variance when the current designated use of the property was intended to act as an institutional control. Finally, EPA might also consider a landowner's refusal to assist in the implementation of an institutional control employed in connection with the response action, such as not recording a deed notice or not agreeing to an easement or covenant, to constitute a violation of the requirement not to impede the effectiveness or integrity of an institutional control.[7]

An owner may seek changes to land use restrictions and institutional controls relied on in connection with a response action by following procedures required by the regulatory agency responsible for overseeing the original response action. Certain restrictions and institutional controls may not need to remain in place in perpetuity. For example, changed site conditions, such as natural attenuation or additional cleanup, may alleviate the need for restrictions or institutional controls. If an owner believes changed site conditions warrant a change in land or resource use or is interested in performing additional response actions that would eliminate the need for particular restrictions and controls, the owner should review and follow the appropriate regulatory agency procedures prior to undertaking any action that may violate the requirements of this provision.

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[7] This may also constitute a violation of the ongoing obligation to provide full cooperation, assistance, and access. CERCLA §§ 101(40)(E), 107(q)(1)(A)(iv), 101(35)(A).

2. *Reasonable Steps*

a. Overview

Congress, in enacting the landowner liability protections, included the condition that bona fide prospective purchasers, contiguous property owners, and innocent landowners take "reasonable steps" with respect to hazardous substance releases to do all of the following:

- Stop continuing releases,
- Prevent threatened future releases, and
- Prevent or limit human, environmental, or natural resource exposure to earlier hazardous substance releases.

CERCLA §§ 101(40)(D), 107(q)(1)(A)(iii), 101(35)(B)(i)(II).[8] Congress included this condition as an incentive for certain owners of contaminated properties to avoid CERCLA liability by, among other things, acting responsibly where hazardous substances are present on their property. In adding this new requirement, Congress adopted an approach that is consonant with traditional common law principles and the existing CERCLA "due care" requirement.[9]

By making the landowner liability protections subject to the obligation to take "reasonable steps," EPA believes Congress intended to balance the desire to protect certain landowners from CERCLA liability with the need to ensure the protection of human health and the environment. In requiring reasonable steps from parties qualifying for landowner liability protections, EPA believes Congress did not intend to create, as a general matter, the same types of response obligations that exist for a CERCLA liable party (e.g., removal of contaminated soil,

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[8] CERCLA § 101(40)(D), the bona fide prospective purchaser reasonable steps provision, provides: "[t]he person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to— (i) stop any continuing release; (ii) prevent any threatened future release; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance."

CERCLA § 107(q)(1)(A), the contiguous property owner reasonable steps provision, provides: "the person takes reasonable steps to— (I) stop any continuing release; (II) prevent any threatened future release; and (III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person."

CERCLA § 101(35)(B)(II), the innocent landowner reasonable steps provision, provides: "the defendant took reasonable steps to— (aa) stop any continuing release; (bb) prevent any threatened future release; and (cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance."

[9] See innocent landowner provision, CERCLA § 107(b)(3)(a).

extraction and treatment of contaminated groundwater).[10] Indeed, the contiguous property owner provision's legislative history states that absent "exceptional circumstances . . . , these persons are not expected to conduct ground water investigations or install remediation systems, or undertake other response actions that would be more properly paid for by the responsible parties who caused the contamination." S. Rep. No. 107-2, at 11 (2001). In addition, the Brownfields Amendments provide that contiguous property owners are generally not required to conduct groundwater investigations or to install ground water remediation systems. CERCLA § 107(q)(1)(D).[11] Nevertheless, it seems clear that Congress also did not intend to allow a landowner to ignore the potential dangers associated with hazardous substances on its property.

Although the reasonable steps legal standard is the same for the three landowner provisions, the obligations may differ to some extent because of other differences among the three statutory provisions. For example, as noted earlier, one of the conditions is that a person claiming the status of a bona fide prospective purchaser, contiguous property owner, or innocent landowner must have "carried out all appropriate inquiries" into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices. CERCLA §§ 101(40)(B), 107(q)(1)(A)(viii), 101(35)(B). However, for a contiguous property owner or innocent landowner, knowledge of contamination defeats eligibility for the liability protection. A bona fide prospective purchaser may purchase with knowledge of the contamination and still be eligible for the liability protection. Thus, only the bona fide prospective purchaser could purchase a contaminated property that is, for example, on CERCLA's National Priorities List[12] or is undergoing active cleanup under an EPA or State

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[10] There could be unusual circumstances where the reasonable steps required of a bona fide prospective purchaser, contiguous property owner, or innocent landowner would be akin to the obligations of a potentially responsible party (e.g., the only remaining response action is institutional controls or monitoring, the benefit of the response action will inure primarily to the landowner, or the landowner is the only person in a position to prevent or limit an immediate hazard). This may be more likely to arise in the context of a bona fide prospective purchaser as the purchaser may buy the property with knowledge of the contamination.

[11] CERCLA § 107(q)(1)(D) provides:

> GROUND WATER. - With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.

[12] The National Priorities List is "the list compiled by EPA pursuant to CERCLA § 105, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response." 40 C.F.R. § 300.5 (2001).

cleanup program, and still maintain his liability protection.

The pre-purchase "appropriate inquiry" by the bona fide prospective purchaser will most likely inform the bona fide prospective purchaser as to the nature and extent of contamination on the property and what might be considered reasonable steps regarding the contamination - - how to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, and natural resource exposures. Knowledge of contamination and the opportunity to plan prior to purchase should be factors in evaluating what are reasonable steps, and could result in greater reasonable steps obligations for a bona fide prospective purchaser.[13] Because the pre-purchase "appropriate inquiry" performed by a contiguous property owner or innocent landowner must result in no knowledge of the contamination for the landowner liability protection to apply, the context for evaluating reasonable steps for such parties is different. That is, reasonable steps in the context of a purchase by a bona fide prospective purchaser may differ from reasonable steps for the other protected landowner categories (who did not have knowledge or an opportunity to plan prior to purchase). Once a contiguous property owner or innocent landowner learns that contamination exists on his property, then he must take reasonable steps considering the available information about the property contamination.

The required reasonable steps relate only to responding to contamination for which the bona fide prospective purchaser, contiguous property owner, or innocent landowner is not responsible. Activities on the property subsequent to purchase that result in new contamination can give rise to full CERCLA liability. That is, more than reasonable steps will likely be required from the landowner if there is new hazardous substance contamination on the landowner's property for which the landowner is liable. See, e.g., CERCLA § 101(40)(A) (requiring a bona fide prospective purchaser to show "[a]ll disposal of hazardous substances at the facility occurred before the person acquired the facility").

As part of the third party defense that pre-dates the Brownfields Amendments and continues to be a distinct requirement for innocent landowners, CERCLA requires the exercise of "due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all the relevant facts and circumstances." CERCLA § 107(b)(3)(a). The due care language differs from the Brownfields Amendments' new reasonable steps language. However, the existing case law on due care provides a reference point for evaluating the reasonable steps requirement. When courts have examined the due care requirement in the context of the pre-existing innocent landowner defense, they have generally concluded that a landowner should take some positive or affirmative step(s) when confronted with hazardous substances on its property. Because the due care cases cited in Attachment B (see Section III.B.2.b "Questions and Answers," below) interpret the due care statutory language and not the reasonable steps statutory language, they are provided as a reference point for the reasonable steps analysis, but are not intended to define reasonable steps.

The reasonable steps determination will be a site-specific, fact-based inquiry. That

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[13] As noted earlier, section 107(r)(2) provides EPA with a windfall lien on the property.

inquiry should take into account the different elements of the landowner liability protections and should reflect the balance that Congress sought between protecting certain landowners from CERCLA liability and assuring continued protection of human health and the environment. Although each site will have its own unique aspects involving individual site analysis, Attachment B provides some questions and answers intended as general guidance on the question of what actions may constitute reasonable steps.

b. Site-Specific Comfort/Status Letters Addressing Reasonable Steps

Consistent with its "Policy on the Issuance of Comfort/Status Letters," ("1997 Comfort/Status Letter Policy"), 62 Fed. Reg. 4,624 (1997), EPA may, in its discretion, provide a comfort/status letter addressing reasonable steps at a specific site, upon request. EPA anticipates that such letters will be limited to sites with significant federal involvement such that the Agency has sufficient information to form a basis for suggesting reasonable steps (e.g., the site is on the National Priorities List or EPA has conducted or is conducting a removal action on the site). In addition, as the 1997 Comfort/Status Letter Policy provides, "[i]t is not EPA's intent to become involved in typical real estate transactions. Rather, EPA intends to limit the use of . . . comfort to where it may facilitate the cleanup and redevelopment of brownfields, where there is the realistic perception or probability of incurring Superfund liability, and where there is no other mechanism available to adequately address the party's concerns." Id. In its discretion, a Region may conclude in a given case that it is not necessary to opine about reasonable steps because it is clear that the landowner does not or will not meet other elements of the relevant landowner liability protection. A sample reasonable steps comfort/status letter is attached to this memorandum (see Attachment C).

The 1997 Comfort/Status Letter Policy recognizes that, at some sites, the state has the lead for day-to-day activities and oversight of a response action, and the Policy includes a "Sample State Action Letter." For reasonable steps inquiries at such sites, Regions should handle responses consistent with the existing 1997 Comfort/Status Letter Policy. In addition, where appropriate, if EPA has had the lead at a site with respect to response actions (e.g., EPA has conducted a removal action at the site), but the state will be taking over the lead in the near future, EPA should coordinate with the state prior to issuing a comfort/status letter suggesting reasonable steps at the site.

3. *Cooperation, Assistance, and Access*

The Brownfields Amendments require that bona fide prospective purchasers, contiguous property owners, and innocent landowners provide full cooperation, assistance, and access to persons who are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility. CERCLA §§ 101(40)(E), 107(q)(1)(A)(iv), 101(35)(A).

4. *Compliance with Information Requests and Administrative Subpoenas*

The Brownfields Amendments require bona fide prospective purchasers and contiguous property owners to be in compliance with, or comply with, any request for information or administrative subpoena issued by the President under CERCLA. CERCLA §§ 101(40)(G), 107(q)(1)(A)(vi). In particular, EPA expects timely, accurate, and complete responses from all recipients of section 104(e) information requests. As an exercise of its enforcement discretion, EPA may consider a person who has made an inconsequential error in responding (e.g., the person sent the response to the wrong EPA address and missed the response deadline by a day), a bona fide prospective purchaser or contiguous property owner, as long as the landowner also meets the other conditions of the applicable landowner liability protection.

5. *Providing Legally Required Notices*

The Brownfields Amendments subject bona fide prospective purchasers and contiguous property owners to the same "notice" requirements. Both provisions mandate, in pertinent part, that "[t]he person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility." CERCLA §§ 101(40)(C), 107(q)(1)(A)(vii). EPA believes that Congress' intent in including this as an ongoing obligation was to ensure that EPA and other appropriate entities are made aware of hazardous substance releases in a timely manner.

"Legally required notices" may include those required under federal, state, and local laws. Examples of federal notices that may be required include, but are not limited to, those under: CERCLA § 103 (notification requirements regarding released substances); EPCRA § 304 ("emergency notification"); and RCRA § 9002 (notification provisions for underground storage tanks). The bona fide prospective purchaser and contiguous property owner have the burden of ascertaining what notices are legally required in a given instance and of complying with those notice requirements. Regions may require these landowners to self-certify that they *have provided* (in the case of contiguous property owners), or *will provide* within a certain number of days of purchasing the property (in the case of bona fide prospective purchasers), all legally required notices. Such self-certifications may be in the form of a letter signed by the landowner as long as the letter is sufficient to satisfy EPA that applicable notice requirements have been met. Like many of the other common elements discussed in this memorandum, providing legally required notices is an ongoing obligation of any landowner desiring to maintain its status as a bona fide prospective purchaser or contiguous property owner.

IV. Conclusion

Evaluating whether a landowner has met the criteria of a particular landowner provision will require careful, fact-specific analysis by the regions as part of their exercise of enforcement discretion. This memorandum is intended to provide EPA personnel with some general guidance on the common elements of the landowner liability protections. As EPA implements the Brownfields Amendments, it will be critical for the regions to share site-specific experiences and

information pertaining to the common elements amongst each other and with the Office of Site Remediation Enforcement, in order to ensure national consistency in the exercise of the Agency's enforcement discretion. EPA anticipates that its Landowner Liability Protection Subgroup, which is comprised of members from various headquarters offices, the Offices of Regional Counsel, the Office of General Counsel, and the Department of Justice, will remain intact for the foreseeable future and will be available to serve as a clearinghouse for information for the regions on the common elements.

Questions and comments regarding this memorandum or site-specific inquiries should be directed to Cate Tierney, in OSRE's Regional Support Division (202-564-4254, Tierney.Cate@EPA.gov), or Greg Madden, in OSRE's Policy & Program Evaluation Division (202-564-4229, Madden.Gregory@EPA.gov).

V. Disclaimer

This memorandum is intended solely for the guidance of employees of EPA and the Department of Justice and it creates no substantive rights for any persons. It is not a regulation and does not impose legal obligations. EPA will apply the guidance only to the extent appropriate based on the facts.

Attachments

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Attachment A

Chart Summarizing Applicability of "Common Elements" to Bona Fide Prospective Purchasers, Contiguous Property Owners, and Section 101(35)(A)(i) Innocent Landowners

Common Element among the Brownfields Amendments Landowner Provisions	Bona Fide Prospective Purchaser	Contiguous Property Owner	Section 101 (35)(A)(i) Innocent Landowner
All Appropriate Inquiry	✔	✔	✔
No affiliation demonstration	✔	✔	*
Compliance with land use restrictions and institutional controls	✔	✔	✔
Taking reasonable steps	✔	✔	✔
Cooperation, assistance, access	✔	✔	✔
Compliance with information requests and administrative subpoenas	✔	✔	**
Providing legally required notices	✔	✔	***

* Although the innocent landowner provision does not contain this "affiliation" language, in order to meet the statutory criteria of the innocent landowner liability protection, a person must establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and the resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship. CERCLA § 107(b)(3). Contractual relationship is defined in section 101(35)(A).

** Compliance with information requests and administrative subpoenas is not specified as a statutory criterion for achieving and maintaining the section 101(35)(A)(i) innocent landowner liability protection. However, CERCLA requires compliance with administrative subpoenas from all persons, and timely, accurate, and complete responses from all recipients of EPA information requests.

*** Provision of legally required notices is not specified as a statutory criterion for achieving and maintaining the section 101(35)(A)(i) innocent landowner liability protection. These landowners may, however, have notice obligations under federal, state and local laws.

Attachment B

Reasonable Steps Questions and Answers

The "reasonable steps" required of a bona fide prospective purchaser, contiguous property owner, or section 101(35)(A)(i) innocent landowner under CERCLA §§ 101(40)(D), 107(q)(1)(A)(iii), and 101(35)(B)(i)(II), will be a site-specific, fact-based inquiry. Although each site will have its own unique aspects involving individual site analysis, below are some questions and answers intended to provide general guidance on the question of what actions may constitute reasonable steps. The answers provide a specific response to the question posed, without identifying additional actions that might be necessary as reasonable steps or actions that may be required under the other statutory conditions for each landowner provision (e.g., providing cooperation and access). In addition, the answers do not address actions that may be required under other federal statutes (e.g., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; and the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*), and do not address landowner obligations under state statutory or common law.[14]

Notification

Q1: If a person conducts "all appropriate inquiry" with respect to a property where EPA has conducted a removal action, discovers hazardous substance contamination on the property that is unknown to EPA, and then purchases the property, is notification to EPA or the state about the contamination a reasonable step?

A1: Yes. First, bona fide prospective purchasers may have an obligation to provide notice of the discovery or release of a hazardous substance under the legally required notice provision, CERCLA § 101(40)(C). Second, even if not squarely required by the notice conditions, providing notice of the contamination to appropriate governmental authorities would be a reasonable step in order to prevent a "threatened future release" and "prevent or limit . . . exposure." Congress specifically identified "notifying appropriate Federal, state, and local officials" as a typical reasonable step. S. Rep. No.107-2, at 11 (2001); see also, Bob's Beverage Inc. v. Acme, Inc., 169 F. Supp. 2d 695, 716 (N.D. Ohio 1999) (failure to timely notify EPA and Ohio EPA of groundwater contamination was factor in conclusion that party failed to exercise due care), *aff'd*, 264 F. 3d 692 (6th Cir. 2001). It should be noted that the bona fide prospective purchaser provision is the only one of the three landowner provisions where a person can purchase property with knowledge that it is contaminated and still qualify for the landowner liability protection.

[14] The Brownfields Amendments did not alter CERCLA § 114(a), which provides: "[n]othing in this chapter shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the release of hazardous substances within such State."

Site Restrictions

Q2: Where a property owner discovers unauthorized dumping of hazardous substances on a portion of her property, are site access restrictions reasonable steps?

A2: Site restrictions are likely appropriate as a first step, once the dumping is known to the owner. Reasonable steps include preventing or limiting "human, environmental, or natural resource exposure" to hazardous substances. CERCLA §§ 101(40)(D)(iii), 107(q)(1)(A)(iii)(III), 101(35)(B)(i)(II)(cc). The legislative history for the contiguous property owner provision specifically notes that "erecting and maintaining signs or fences to prevent public exposure" may be typical reasonable steps. S. Rep. No. 107-2, at 11 (2001); see also, Idylwoods Assoc. v. Mader Capital, Inc., 915 F. Supp. 1290, 1301 (W.D.N.Y. 1996) (failure to restrict access by erecting signs or hiring security personnel was factor in evaluating due care), *aff'd on reh'g*, 956 F. Supp. 410, 419-20 (W.D.N.Y. 1997); New York v. Delmonte, No. 98-CV-0649E, 2000 WL 432838, *4 (W.D.N.Y. Mar. 31, 2000) (failure to limit access despite knowledge of trespassers was not due care).

Containing Releases or Threatened Releases

Q3: If a new property owner discovers some deteriorating 55 gallon drums containing unknown material among empty drums in an old warehouse on her property, would segregation of the drums and identification of the material in the drums constitute reasonable steps?

A3: Yes, segregation and identification of potential hazards would likely be appropriate first steps. Reasonable steps must be taken to "prevent any threatened future release." CERCLA §§ 101(40)(D)(ii), 107(q)(1)(A)(iii)(II), 101(35)(B)(i)(II)(bb). To the extent the drums have the potential to leak, segregation and containment (e.g., drum overpack) would prevent mishandling and releases to the environment. For storage and handling purposes, an identification of the potential hazards from the material will likely be necessary. Additional identification steps would likely be necessary for subsequent disposal or resale if the material had commercial value.

Q4: If a property owner discovers that the containment system for an on-site waste pile has been breached, do reasonable steps include repairing the breach?

A4: One of the reasonable steps obligations is to "stop any continuing release." CERCLA §§ 101(40)(D)(i), 107(q)(1)(A)(iii)(I), 101(35)(B)(i)(II)(aa). In general, the property owner should take actions to prevent contaminant migration where there is a breach from an existing containment system. Both Congress and the courts have identified maintenance of hazardous substance migration controls as relevant property owner obligations. For example, in discussing contiguous property owners' obligations for migrating groundwater plumes, Congress identified "maintaining any existing barrier or other elements of a response action on their property that

address the contaminated plume" as a typical reasonable step. S. Rep. No. 107-2, at 11 (2001); see also, Franklin County Convention Facilities Auth. v. American Premier Underwriters, Inc., 240 F.3d 534, 548 (6th Cir. 2001) (failure to promptly erect barrier that allowed migration was not due care); United States v. DiBiase Salem Realty Trust, No. Civ. A. 91-11028-MA, 1993 WL 729662, *7 (D. Mass. Nov. 19, 1993) (failure to reinforce waste pit berms was factor in concluding no due care), *aff'd*, 45 F.3d 541, 545 (1st Cir. 1995). In many instances, the current property owner will have responsibility for maintenance of the containment system. If the property owner has responsibility for maintenance of the system as part of her property purchase, then she should repair the breach. In other instances, someone other than the current landowner may have assumed that responsibility (e.g., a prior owner or other liable parties that signed a consent decree with EPA and/or a State). If someone other than the property owner has responsibility for maintenance of the containment system pursuant to a contract or other agreement, then the question is more complicated. At a minimum, the current owner should give notice to the person responsible for the containment system and to the government. Moreover, additional actions to prevent contaminant migration would likely be appropriate.

Q5: If a bona fide prospective purchaser buys property at a Superfund site where part of the approved remedy is an asphalt parking lot cap, but the entity or entities responsible for implementing the remedy (e.g., PRPs who signed a consent decree) are unable to repair the deteriorating cap (e.g., the PRPs are now defunct), should the bona fide prospective purchaser repair the deteriorating asphalt parking lot cap as reasonable steps?

A5: Taking "reasonable steps" includes steps to: "prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substances." CERCLA §§ 101(40)(D)(iii), 107(q)(1)(A)(iii)(III), 101(35)(B)(i)(II)(cc). In this instance, the current landowner may be in the best position to identify and quickly take steps to repair the asphalt cap and prevent additional exposures.

Remediation

Q6: If a property is underlain by contaminated groundwater emanating from a source on a contiguous or adjacent property, do reasonable steps include remediating the groundwater?

A6: Generally not. Absent exceptional circumstances, EPA will not look to a landowner whose property is not a source of a release to conduct groundwater investigations or install groundwater remediation systems. Since 1995, EPA's policy has been that, in the absence of exceptional circumstances, such a property owner did not have "to take any affirmative steps to investigate or prevent the activities that gave rise to the original release" in order to satisfy the innocent landowner due care requirement. See May 24, 1995 "Policy Toward Owners of Property Containing Contaminated Aquifers." ("1995 Contaminated Aquifers Policy"). In the Brownfields Amendments, Congress explicitly identified this policy in noting that reasonable

steps for a contiguous property owner "shall not require the person to conduct groundwater investigations or to install groundwater remediation systems," except in accordance with that policy. See CERCLA § 107(q)(1)(D). The policy does not apply "where the property contains a groundwater well, the existence or operation of which may affect the migration of contamination in the affected area." 1995 Contaminated Aquifers Policy, at 5. In such instances, a site-specific analysis should be used in order to determine reasonable steps. In some instances, reasonable steps may simply mean operation of the groundwater well consistent with the selected remedy. In other instances, more could be required.

Q7: If a protected landowner discovers a previously unknown release of a hazardous substance from a source on her property, must she remediate the release?

A7: Provided the landowner is not otherwise liable for the release from the source, she should take some affirmative steps to "stop the continuing release," but EPA would not, absent unusual circumstances, look to her for performance of complete remedial measures. However, notice to appropriate governmental officials and containment or other measures to mitigate the release would probably be considered appropriate. Compare Lincoln Properties, Ltd. v. Higgins, 823 F. Supp. 1528, 1543-44 (E.D. Calif. 1992) (sealing sewer lines and wells and subsequently destroying wells to protect against releases helped establish party exercised due care); Redwing Carriers, Inc. v. Saraland Apartments, 94 F.3d 1489, 1508 (11th Cir. 1996) (timely development of maintenance plan to remove tar seeps was factor in showing due care was exercised); New York v. Lashins Arcade Co., 91 F.3d 353 (2nd Cir. 1996) (instructing tenants not to discharge hazardous substances into waste and septic systems, making instructions part of tenancy requirements, and inspecting to assure compliance with this obligation, helped party establish due care); with Idylwoods Assoc. v. Mader Capital, Inc., 956 F. Supp. 410, 419-20 (W.D.N.Y. 1997) (property owner's decision to do nothing resulting in spread of contamination to neighboring creek was not due care); Kerr-McGee Chem. Corp. v. Lefton Iron & Metal Co., 14 F.3d 321, 325 (7th Cir. 1994) (party that "made no attempt to remove those substances or to take any other positive steps to reduce the threat posed" did not exercise due care). As noted earlier, if the release is the result of a disposal after the property owner's purchase, then she may be required to undertake full remedial measures as a CERCLA liable party. Also, if the source of the contamination is on the property, then the property owner will not qualify as a contiguous property owner but may still qualify as an innocent landowner or a bona fide prospective purchaser.

Site Investigation

Q8: If a landowner discovers contamination on her property, does the obligation to take reasonable steps require her to investigate the extent of the contamination?

A8: Generally, where the property owner is the first to discover the contamination, she should

take certain basic actions to assess the extent of contamination. Absent such an assessment, it will be very difficult to determine what reasonable steps will stop a continuing release, prevent a threatened future release, or prevent or limit exposure. While a full environmental investigation may not be required, doing nothing in the face of a known or suspected environmental hazard would likely be insufficient. See, e.g., United States v. DiBiase Salem Realty Trust, 1993 WL 729662, *7 (failure to investigate after becoming aware of dangerous sludge pits was factor in concluding party did not exercise due care), *aff'd*, 45 F.3d 541, 545 (1st Cir. 1995); United States v. A&N Cleaners and Launderers, Inc., 854 F. Supp. 229 (S.D.N.Y. 1994) (dictum) (failing to assess environmental threats after discovery of disposal would be part of due care analysis). Where the government is actively investigating the property, the need for investigation by the landowner may be lessened, but the landowner should be careful not to rely on the fact that the government has been notified of a hazard on her property as a shield to potential liability where she fails to conduct any investigation of a known hazard on her property. Compare New York v. Lashins Arcade Co., 91 F.3d 353, 361 (2nd Cir. 1996) (no obligation to investigate where RI/FS already commissioned) with DiBiase Salem Realty Trust, 1993 WL 729662, *7 (State Department of Environmental Quality knowledge of hazard did not remove owner's obligation to make some assessment of site conditions), *aff'd*, 45 F.3d 541, 545 (1st Cir. 1995).

Performance of EPA Approved Remedy

Q9: If a new purchaser agrees to assume the obligations of a prior owner PRP, as such obligations are defined in an order or consent decree issued or entered into by the prior owner and EPA, will compliance with those obligations satisfy the reasonable steps requirement?

A9: Yes, in most cases compliance with the obligations of an EPA order or consent decree will satisfy the reasonable steps requirement so long as the order or consent decree comprehensively addresses the obligations of the prior owner through completion of the remedy. It should be noted that not all orders or consent decrees identify obligations through completion of the remedy and some have open-ended cleanup obligations.

Attachment C

Sample Federal Superfund Interest Reasonable Steps Letter

The sample comfort/status letter below may be used in the exercise of enforcement discretion where EPA has sufficient information regarding the site to have assessed the hazardous substance contamination and has enough information about the property to make suggestions as to steps necessary to satisfy the "reasonable steps" requirement. In addition, like any comfort/status letter, the letters should be provided in accordance with EPA's "Comfort/Status Letter Policy." That is, they are not necessary or appropriate for purely private real estate transactions. Such letters may be issued when: (1) there is a realistic perception or probability of incurring Superfund liability, (2) such comfort will facilitate the cleanup and redevelopment of a brownfield property, (3) there is no other mechanism to adequately address the party's concerns, and (4) EPA has sufficient information about the property to provide a basis for suggesting reasonable steps.

[Insert Addressee]

Re: **[Insert Name or Description of Property]**

Dear **[insert name of requester]:**

I am writing in response to your letter dated **[insert date]** concerning the property referenced above. As you know, the **[insert name]** property is located within or near the **[insert name of CERCLIS site.]** EPA is currently **[insert description of action EPA is taking or plans to take and any contamination problem.]**

The **[bona fide prospective purchaser, contiguous property owner, or innocent landowner]** provision states that a person meeting the criteria of **[insert section]** is protected from CERCLA liability. **[For bona fide prospective purchaser only, it may be appropriate to insert following language: To the extent EPA's response action increases the fair market value of the property, EPA may have a windfall lien on the property. The windfall lien is limited to the increase in fair market value attributable to EPA's response action, capped by EPA's unrecovered response costs.]** (I am enclosing a copy of the relevant statutory provisions for your reference.) To qualify as a **[bona fide prospective purchaser, contiguous property owner, or section 101(35)(A)(i) innocent landowner]**, a person must (among other requirements) take "reasonable steps" with respect to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases. You have asked what actions you must take, as the **[owner or prospective owner]** of the property, to satisfy the "reasonable steps" criterion.

As noted above, EPA has conducted a **[insert most recent/relevant action to "reasonable steps" inquiry taken by EPA]** at **[insert property name]** and has identified a

number of environmental concerns. Based on the information EPA has evaluated to date, EPA believes that, for an owner of the property, the following would be appropriate reasonable steps with respect to the hazardous substance contamination found at the property:

[insert paragraphs outlining reasonable steps with respect to each environmental concern]

This letter does not provide a release from CERCLA liability, but only provides information with respect to reasonable steps based on the information EPA has available to it. This letter is based on the nature and extent of contamination known to EPA at this time. If additional information regarding the nature and extent of hazardous substance contamination at **[insert property name]** becomes available, additional actions may be necessary to satisfy the reasonable steps criterion. In particular, if new areas of contamination are identified, you should ensure that reasonable steps are undertaken. As the property owner, you should ensure that you are aware of the condition of your property so that you are able to take reasonable steps with respect to any hazardous substance contamination at or on the property.

Please note that the **[bona fide prospective purchaser, contiguous property owner, or innocent landowner]** provision has a number of conditions in addition to those requiring the property owner to take reasonable steps. Taking reasonable steps and many of the other conditions are continuing obligations of the **[bona fide prospective purchaser, contiguous property owner, or section 101(35)(A)(i) innocent landowner]**. You will need to assess whether you satisfy each of the statutory conditions for the **[bona fide prospective purchaser, contiguous property owner, or innocent landowner]** provision and continue to meet the applicable conditions.

EPA hopes this information is useful to you. If you have any questions, or wish to discuss this letter, please feel free to contact **[insert EPA contact and address]**.

Sincerely,

[insert name of EPA contact]

Attachment No. 7

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 21 2011

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Enforcement Discretion Guidance Regarding the Affiliation Language of CERCLA's Bona Fide Prospective Purchaser and Contiguous Property Owner Liability Protections

FROM: Elliott J. Gilberg, Director
Office of Site Remediation Enforcement

TO: Regional Counsel, Regions I-X
Superfund National Policy Managers, Regions I-X

I. Introduction

Sections 101(40) and 107(q) of the Small Business Liability Relief and Brownfields Revitalization Act[1] (the Brownfields Amendments) provide certain parties, bona fide prospective purchasers and contiguous property owners, respectively, protection from liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as "Superfund"), 42 U.S.C. §§ 9601(40), 9607(q), so long as these parties meet certain statutory requirements. One requirement is that a party who wishes to be treated as exempt from CERCLA liability cannot be "affiliated with" another party who is potentially liable under CERCLA at a facility. As discussed below, EPA recognizes the uncertainty regarding the potential liability of certain parties under CERCLA, and offers some general guidance to be considered by EPA in exercising its enforcement discretion.

This memorandum is intended to assist EPA personnel in, on a site-specific basis, exercising the Agency's enforcement discretion regarding the affiliation language. It is not a regulation and does not create new legal obligations or limit or expand obligations under any federal, state, tribal or local law. It does not create any substantive rights for any persons. In addition, this guidance does not alter EPA's policy of not providing no action assurances outside the framework of a legal settlement.

[1] Pub. L. No. 107-118 (2002).

This memorandum discusses how EPA generally intends to exercise its enforcement discretion in certain circumstances. Specifically, this memorandum focuses on parties who meet each of the requirements of the bona fide prospective purchaser or contiguous property owner provisions except for the requirement prohibiting parties from being "affiliated with any other person that is potentially liable." EPA generally intends to apply the guidance only to the extent appropriate based on the facts. EPA recognizes that each affiliation situation is fact specific, and EPA may deviate from this guidance as necessary or appropriate based on the facts of each case. EPA may update this guidance in the future and provide additional examples discussing possible scenarios.

II. Background

A. Affiliation Language in the Bona Fide Prospective Purchaser Provision

The Brownfields Amendments established the bona fide prospective purchaser (BFPP) provision, which for the first time provided statutory protection from CERCLA liability for entities that purchase a contaminated facility after January 11, 2002 with knowledge of the contamination.[2] To be a BFPP, a purchaser must satisfy a number of statutory requirements, including that the purchaser not be affiliated with a person that is potentially liable at the facility.[3] Specifically, a purchaser cannot be:

> (i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through
> (I) any direct or indirect familial relationship; or
> (II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or
> (ii) the result of a reorganization of a business entity that was potentially liable.[4]

B. Affiliation Language in the Contiguous Property Owner Provision

In addition, the Brownfields Amendments established the Contiguous Property Owner (CPO) liability protection, which states that:

> A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under [§ 107(a)] solely by reason of the contamination if –
> (i) the person did not cause, contribute, or consent to the release or threatened release;

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[2] *See* CERCLA §§ 101(40), 107(r).

[3] For additional information on the BFPP requirements, *see* CERCLA § 101(40) and EPA's *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability (Common Elements)* (Bromm, 3/6/2003) (available at http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-guide.pdf) (hereinafter "Common Elements Guidance").

[4] CERCLA § 101(40)(H).

(ii) the person is not –
   (I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or
   (II) the result of a reorganization of a business entity that was potentially liable....[5]

The CPO affiliation language differs from the BFPP affiliation language in that there is no exception that excludes "relationship[s] ... created by the instruments by which title to the facility is conveyed or financed" from the types of relationships that constitute an affiliation as there is for the BFPP liability protection.[6] Except for this difference, the affiliation language in the BFPP and CPO provisions is virtually identical.

C. Burden of Proof for Both the BFPP and CPO Liability Protections

The burden of proof for establishing all elements of the BFPP and CPO provisions, including the affiliation language, falls on the person seeking the liability protection.[7] A person seeking protection under the BFPP and CPO provisions can assert protection from liability without EPA involvement. Ultimately, if the issue is disputed, the courts will determine whether parties in specific cases have satisfied the affiliation language in the BFPP and CPO provisions in order to protect themselves from liability.

CERCLA expressly confers upon EPA the ability to provide certain assurances to CPOs if they have met the above burden of proof.[8] In certain circumstances, a CPO may be eligible for: (1) an assurance letter from EPA that states that EPA will not take an enforcement action against the CPO, commonly known as a "no action assurance letter" or (2) a CPO settlement that will provide the CPO protection against cost recovery or contribution action.[9] There is no equivalent BFPP assurance provision, but there are limited circumstances when EPA may consider using site-specific tools to provide clarification on EPA's enforcement intentions for BFPPs. These tools include comfort/status letters, BFPP-doing-work-agreements, or prospective purchaser agreements.[10]

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[5] CERCLA § 107(q)(1)(A).
[6] CERCLA § 101(40)(H)(i)(II).
[7] CERCLA §§ 101(40) & 107(q)(1)(B).
[8] CERCLA § 107(q)(3). *See also Interim Enforcement Discretion Guidance Regarding Contiguous Property Owners*, (Bromm 1/13/04) (available at: http://www.epa.gov/compliance/resources/policies/cleanup/superfund/contig-prop.pdf).
[9] *Id.*
[10] As stated in previous guidance, EPA believes that the Brownfields Amendments make PPAs from the Federal government unnecessary in most cases because CERCLA §§ 101(40) and 107(r) allow parties to purchase property with knowledge of contamination and not acquire liability under CERCLA. *See Bona Fide Prospective Purchasers and the New Amendments to CERCLA*, (Bromm 5/31/02) (available at: http://www.epa.gov/compliance/resources/policies/cleanup/superfund/bonf-pp-cercla-mem.pdf). The Agency recognizes, however, that there may be some limited circumstances where EPA could serve the public interest by agreeing to provide a PPA. For example, a PPA may be appropriate for a party that does not meet the criteria in CERCLA § 101(40) because it may have an affiliation with a PRP, but it is nevertheless in the public interest for EPA to facilitate the transaction by addressing the prospective purchaser's liability concerns (*e.g.*, through a PPA that provides a covenant not to sue and contribution protection).

III. Discussion

A. Initial Considerations

The affiliation language in both the BFPP and CPO provisions focuses on relationships between the property owner and any entities that are potentially liable under CERCLA for response costs at the facility (either the property owned by the person seeking BFPP status or the property contiguous to a source property). However, before analyzing whether there is a prohibited affiliation, EPA personnel should consider four preliminary issues.

First, the affiliation language in CERCLA §§ 101(40)(H) and 107(q)(1)(A)(ii) requires that a person seeking liability protection under the BFPP or CPO provisions not be potentially liable for response costs at a facility. Therefore, when analyzing the potential BFPP or CPO status of a person, EPA personnel should first consider whether the person is *otherwise* a Potentially Responsible Party (PRP) at the facility under CERCLA § 107(a) (*e.g.*, as an owner/operator at the time of disposal, a transporter, or an arranger for the disposal of hazardous substances). If so, the person cannot qualify as a BFPP or a CPO and an affiliation analysis would be unnecessary.

> Example # 1: Company A wants to buy a contaminated property and has complied with the other requirements of the BFPP liability protection. Ten years prior, Company A had operated a refinery on the contaminated property, during which operation the property was contaminated with hazardous substances. Assuming Company A is a PRP at the property as an operator at the time of disposal, Company A would not qualify as a BFPP.
>
> If Company A bought the property adjacent to the contaminated property on which it had previously operated a refinery, and from which the property purchased by Company A was contaminated, Company A would not qualify as a CPO assuming it is a PRP at the adjacent property.

Second, as in all cases where EPA is analyzing a person's potential BFPP or CPO status for purposes of deciding whether to exercise its enforcement authority, EPA should consider whether the entity is in fact the same entity as a PRP or is potentially liable under other principles of corporate law, such as successor liability. For example, a division of a corporation, a company that has continued in business under a changed name, or a corporate successor, such as the survivor of a statutory merger, may appear to be a different entity, but may nevertheless still be liable under principles of corporate law. After careful analysis, the relationship between the PRP and the entity in question may lead EPA to decide not to treat that entity as a BFPP or CPO. This in-depth analysis may also be applicable to questions regarding relationships between governmental and quasi-governmental entities. States and cities often create divisions that address certain aspects of governmental services, *e.g.* waste, roads, or parks. Depending on state law and how the divisions were created, they may in fact be the same entity as the state or city. In some cases, this may be readily apparent from examining the document that created the entity. Analyzing the potential BFPP or CPO status of other governmental or quasi-governmental entities may require more extensive research.

Example # 2: State A's Department of Parks wishes to acquire a contaminated property and has complied with the other requirements of the BFPP provision. State A's Department of Waste had previously operated a landfill on the property, during which time the property became contaminated and State A became a PRP. Assuming the Department of Parks and the Department of Waste are both divisions of the same entity, State A, that is a PRP, State A's Department of Parks would not qualify as a BFPP.

If State A's Department of Parks had bought property adjacent to a contaminated property on which the Department of Waste had previously operated a landfill, the operation of which caused the contamination, State A's Department of Parks would not qualify as a CPO assuming the State itself is a PRP at the property.

Third, EPA personnel should analyze whether a business entity asserting BFPP or CPO status is the result of a reorganization of a liable party through bankruptcy or other corporate restructuring. In such a case, the entity may not be eligible for BFPP or CPO status because it is "the result of a reorganization of a business entity that was potentially liable."[11]

Example # 3: Company A owns a contaminated site on which it had disposed of hazardous waste. During corporate reorganization, Company A forms Company B to acquire the contaminated site. Assuming Company B is the result of a reorganization of the PRP, Company B would not qualify as a BFPP or a CPO.

Fourth, EPA personnel should consider whether the party with whom a person may have an affiliation is actually a PRP at the facility. Pursuant to CERCLA §§ 101(40)(H) and 107(q)(1)(A)(ii), a person cannot qualify as a BFPP or CPO if he or she is affiliated with a *potentially liable party* (as opposed to a non-liable party). If the party with whom the potential BFPP or CPO has a relationship is not a PRP, then an affiliation with that party would not disqualify the person from BFPP or CPO status. For example, the entity with whom a potential BFPP or CPO is affiliated could have owned the property at one point in the past, but not at the time of disposal. Under this scenario, the entity would likely not be liable under CERCLA § 107(a)(1) or (2), and the relationship would likely not be a prohibited affiliation.

Example # 4: Mr. X wishes to buy property that was previously owned by his sister. Mr. X's sister is not a PRP at the property, because the property did not become contaminated until the person who bought the property from her, Mr. Y, began a mining operation there. Assuming Mr. X meets the other requirements of the BFPP or CPO provisions, EPA would treat Mr. X as a BFPP or CPO.

[11] CERCLA §§ 101(40)(H)(ii) and 107(q)(1)(A)(ii)(II). This may require a review of the documents through which the restructuring was accomplished, e.g., an approved bankruptcy plan or reorganization or asset purchase agreement.

B. Statutory Exceptions to the "No Affiliations" Requirement

Certain types of affiliations between the purchaser of property or owner and other entities do not disqualify the purchaser of property or owner from BFPP or CPO liability protection under the language of CERCLA §§ 101(40)(H) or 107(q)(1)(A)(ii). The first of these exceptions to the "no affiliations" requirement is only for BFPPs, while the second is for both BFPPs and CPOs.

1. Instruments by Which Title to the Facility is Conveyed or Financed

CERCLA § 101(40)(H)(i)(II) provides an important exception to the general requirement that prospective purchasers may not have an affiliation with a PRP in order to qualify for the BFPP provision. There is not a similar exception for CPOs. This exception allows contractual, corporate, or financial relationships that are "created by the instruments by which title to the facility is conveyed or financed."

In analyzing a party's potential BFPP status for the purposes of exercising its enforcement authority, EPA generally intends to consider deeds or agreements that make transfer of title possible, such as agreements with a title insurance company or a third-party lender, to be within the scope of that language.

Example # 5: Company A wishes to purchase a contaminated property and has complied with the other requirements of the BFPP provision. Company B, the PRP owner of the property, is willing to sell it, but Company A has concerns about defects to the title for the property. Company A would like to acquire title insurance through a third party, which will require Company B to assert certain facts in a signed document. Although this title insurance agreement is a contractual or financial relationship between Company A and the PRP at the property, under the exception for relationships created by the instruments by which title to the facility is conveyed or financed in the affiliation language contained in CERCLA § 101(40)(H)(i)(II), EPA generally intends to exercise its enforcement discretion to treat Company A as if it were a BFPP so long as it meets the other requirements in the BFPP provision.

2. Contracts for the Sale of Goods or Services

The affiliation language in CERCLA §§ 101(40)(H) and 107(q)(1)(A)(ii) includes an exemption that provides that "a contractual, corporate, or financial relationship that is created ... by a contract for the sale of goods or services" is not an affiliation that defeats potential liability protection under the BFPP or CPO provisions.

In analyzing potential BFPP or CPO status for the purpose of exercising its enforcement authority, EPA generally will adopt a plain language definition of "goods and services" when

applying the affiliation language. For example, "goods" are defined as "commodities; wares; portable personal property."[12] "Services" are defined as "employment in duties or work for another."[13] Note that, as with all of these examples, the statute requires that the entity asserting BFPP or CPO status must not otherwise be liable at the facility.

Example # 6: Company A plans to purchase a parcel of property contaminated with hazardous substances. The current owner is a municipality that is considered to be a PRP at the property. Company A has performed all appropriate inquiries before purchasing the property and otherwise plans to comply with the requirements of the BFPP provision. In the past, Company A paid the municipality snow removal fees for a different property than the one it plans to purchase. EPA generally intends to exercise its enforcement discretion to treat Company A as if it were a BFPP because a contract for the snow removal is a contract for a service.

EPA may reach a similar result if Company A were asserting CPO status in purchasing property adjacent to the municipality-owned parcel above, assuming the other elements of the CPO provision are met.

C. Special Considerations in Applying the Affiliation Language

The affiliation language in the BFPP and CPO provisions is broad and could potentially encompass many, if not all, familial relationships, and many corporate or other relationships, thus having the potential consequence of reducing the number of entities that qualify for these liability protections. As stated in EPA's Common Elements Guidance, "It appears that Congress intended the affiliation language to prevent a potentially responsible party from contracting away its CERCLA liability through a transaction to a family member or related corporate entity."[14] With this consideration in mind, EPA has identified certain relationships which, in the exercise of its enforcement discretion, it generally intends *not* to treat as disqualifying affiliations. They include:

1. Relationships at Other Properties: relationships that occur between an entity seeking BFPP or CPO status with a PRP for properties other than the one impacted by the contamination or the source property.
2. Post-Acquisition Relationships: relationships between the purchaser and a PRP that arose after the purchase and sale of the property.
3. Relationships Created During Title Transfer: contractual or financial documents or relationships that are often executed or created at the time that title to the property is transferred.
4. Tenants Seeking to Purchase Property They Lease: relationships established between a tenant and an owner during the leasing process.

These relationships are generally not created to avoid CERCLA liability and, therefore, in exercising its enforcement discretion on a site-specific basis, EPA generally intends not to treat

[12] AMERICAN HERITAGE DICTIONARY 756 (4th ed. 2006).
[13] *Id.* at 1591.
[14] Common Elements Guidance at 5.

them as prohibited affiliations that would prevent a purchaser from being a BFPP or CPO. EPA will analyze all facts and circumstances surrounding the above relationships in evaluating whether the relationships were created to avoid CERCLA liability. Examples illustrating these relationships are provided below.

1. Relationships at Other Properties

If a purchaser has existing relationships with a PRP at other properties unrelated to the property to be purchased, or that do not impact the property itself or the source property, EPA generally intends to exercise its enforcement discretion and treat the purchaser as a BFPP or CPO, as appropriate. EPA will analyze such relationships on a case-by-case basis, guided by the general principles set forth in this document. If the parcel that the person plans to purchase is part of a larger property, EPA generally intends to focus on just those affiliations that may be related to that parcel.

Example # 7: Company A wishes to purchase contaminated property from Company B, who is a PRP owner of the property. Company A and Company B have existing lease agreements at other properties, on which Company B is not a PRP. The existing lease agreements at other properties may be considered "contractual . . . relationship[s]" under the affiliation language, but they are not related to the contaminated property at which Company B is a PRP. If Company A has complied with the other requirements of the BFPP provisions, EPA generally intends to exercise its enforcement discretion to treat Company A as if it were a BFPP.

Company A is a potential CPO that purchased contaminated property and had existing lease agreements at other properties owned by Company C, the owner of the neighboring property, which is the source of the contamination on Company A's property. EPA generally intends to exercise its enforcement discretion to treat Company A as if it were a CPO so long as Company A complied with the other requirements of the CPO provision.

Example # 8: A city has met the other requirements of the BFPP liability protection and plans to purchase property from a county that is a PRP at the property. The city has many existing leases with the county on other parcels of property, but does not have any such relationships with the county pertaining to the property the city wants to purchase. EPA generally intends to exercise its enforcement discretion to treat the city as if it were a BFPP so long as the city's existing contracts with the county, who is a PRP with respect to the property, do not relate to the property.

Similarly, if the city purchased property adjacent to the county-owned property above, EPA generally intends to exercise its enforcement discretion to treat the city as if it were a CPO, assuming the other elements of the CPO provision are met.

Example # 9: The owner of an office building learns that there was a release of a hazardous substance on the property next door that has contaminated his property by migrating through groundwater under his property. The owner of the office building has complied with all of the other requirements of the CPO provision, but is concerned because he previously had purchased a separate piece of property from the owner of the adjacent parcel. EPA generally intends to exercise its enforcement discretion to treat the owner of the office building as if it were a CPO because the existing relationship between the two owners does not relate to the office building property or the source property.

If the owner of the office building had purchased the property from a PRP, and it had previously purchased a piece of property unrelated to the office building from that same PRP, EPA generally intends to treat the owner as a BFPP if all other requirements of the BFPP provision are met. EPA generally does not intend to treat the other purchase from the PRP that is unrelated to the source or the office building as if it were a disqualifying affiliation.

2. Post-Acquisition Relationships

EPA generally does not intend to treat familial, contractual, corporate or financial relationships that arise between either a BFPP or a CPO and a PRP after the acquisition of the property as disqualifying affiliations. However, in analyzing the facts and circumstances surrounding post-acquisition relationships, EPA intends to follow the general principles set forth in this memorandum regarding relationships structured in an attempt by the parties to avoid CERCLA liability.[15]

Example # 10: Company A acquires an industrial park from Company B that is contaminated. Company B is a PRP as an owner during the time of disposal at the industrial park. Company A meets the BFPP criteria and, at the time of purchase, does not have a disqualifying affiliation with Company B or any other PRP. Later, Company A leases a warehouse within the industrial park to Company B. So long as Company A maintains compliance with the other requirements of the BFPP provision, EPA generally intends to exercise its enforcement discretion to treat Company A as if it were a BFPP.

EPA would generally apply a similar analysis for CPOs. Assume Company A has purchased an industrial park from a third party and is now seeking liability protection as a CPO for contamination discovered subsequent to purchase that is migrating onto the industrial park property. If Company A then leases a warehouse within the industrial park to Company B (a PRP at a site contiguous to the industrial park that is the source of the contamination at issue), EPA generally intends to exercise its enforcement discretion and treat Company A as if it were a CPO so long as Company A complied with the other requirements of the CPO provision.

[15] *See* Common Elements Guidance at 5.

3. *Documents that Typically Accompany Title Transfer*

As mentioned above in Section B. 1., the affiliation language in CERCLA § 101(40)(H) provides an exception which is only applicable to BFPPs. This exception allows contractual, corporate, or financial relationships that are "created by the instruments by which title to the facility is conveyed or financed." EPA generally does not intend to treat certain contractual or financial relationships (*e.g.*, certain types of indemnification[16] or insurance agreements) that are typically created as a part of the transfer of title, although perhaps not part of the deed itself, as disqualifying affiliations.[17] In deciding whether to exercise its enforcement discretion regarding these types of relationships, EPA will analyze the circumstances surrounding the transfer of title and the specifics of the contractual or financial relationships and follow the general principles set forth in this memorandum.

4. *Tenants Seeking to Purchase Property They Lease*

EPA generally intends to consider several issues when deciding how to exercise its enforcement discretion regarding tenants who purchase property[18] from a PRP owner. The first is whether the tenant/purchaser may be potentially liable for the contamination at the property based on its own actions. If the tenant/purchaser may already be potentially liable, EPA generally does not intend to treat the tenant as a BFPP or CPO. If the tenant/purchaser is not liable, EPA should consider whether the owner/landlord is a PRP or not. If the owner/landlord is not a PRP, then the lease would not be a prohibited affiliation. However, if the landlord is a PRP, EPA will analyze the site-specific facts surrounding the actions of the parties and their relationship in order to determine whether it would be appropriate to exercise enforcement discretion in treating the tenant/purchaser as a BFPP or CPO. In that case, the tenant may contact the appropriate EPA Regional office before purchasing the property so that the Agency and the tenant can work together to resolve the tenant's liability concerns.

In addition, EPA has previously issued enforcement discretion guidance ("the Tenants Guidance") regarding how tenants may be able to derive BFPP status during their leasehold from an owner who maintains BFPP status.[19] Regarding tenants who may not be able to derive BFPP status from a BFPP owner because the owner has lost its BFPP status, EPA generally intends to exercise its enforcement discretion in accordance with the policy set forth in the Tenants Guidance.

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[16] Although indemnification agreements may allocate responsibility for cleanup costs between a purchaser and seller, they do not relieve a party of its CERCLA liability. *See* CERCLA § 107(e).

[17] Please note, however, that a recent judicial decision addressed the applicability of the "no affiliation" requirement to a liability release agreement, which the court held was one basis, among others, for rejecting a party's claim for liability protection as a BFPP. *Ashley II of Charleston, LLC v. PCS Nitrogen, Inc.*, 2011 WL 2119256 (D.S.C. May 27, 2011), *appeal filed*, No. 11-1662 (4th Cir. June 24, 2011). Based on the facts before it, the court found that the purchaser failed to satisfy the "no affiliation" requirement due to a release agreement, in which the purchaser agreed to release the seller as to environmental liability at the site at issue, and the purchaser's subsequent efforts to dissuade EPA from taking an enforcement action against the seller. *Id.* at 60.

[18] Hereinafter referred to as "tenant/purchaser."

[19] If the landlord is not a PRP by virtue of qualifying as a BFPP, the tenant may already be a BFPP. *See Enforcement Discretion Guidance Regarding the Applicability of the Bona Fide Prospective Purchaser Definition in CERCLA § 101(40) to Tenants*, (Nakayama and Bodine 1/14/09) (available at: http://www.epa.gov/compliance/resources/policies/cleanup/superfund/bfpp-tenant-mem.pdf).

IV. Contact

Questions regarding this guidance and affiliation questions in general should be directed to Mary Godwin in EPA's Office of Site Remediation Enforcement at (202) 564-5114 or godwin.mary@epa.gov and to the Brownfield Coordinator in the appropriate EPA Regional office (please see http://www.epa.gov/brownfields/corcntct.htm for contact information).

cc: Karin Leff, OSRE
Greg Sullivan, OSRE
David Lloyd, OBLR
John Michaud, OGC
Jennifer Lewis, OGC
Daniel Schramm, OGC
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